THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 21

Chapters 160 through 168A

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 21 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analysis show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

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Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 160 through 168A of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

The General Statutes of North Carolina
1997 Cumulative Supplement

VOLUME 21

Chapter 160A.

Cities and Towns.

Article 3.

Contracts.

Sec.
160A-20. Security interests.

Article 4A.

Extension of Corporate Limits.

Part 2. Annexation by Cities of Less than 5,000.

160A-38. Appeal.

Part 3. Annexation by Cities of 5,000 or More.

160A-50. Appeal.

Part 4. Annexation of Noncontiguous Areas.

Article 7.

Administrative Offices.

Part 2. Administration of Council-Manager Cities.

160A-147. Appointment of city manager; dual office holding.

Part 4. Personnel.

160A-163. Retirement benefits.

Article 8.

Delegation and Exercise of the General Police Power.

160A-176.2. Ordinances effective in Atlantic Ocean.
160A-197. [Repealed.]
160A-198. Curfews.

Article 9.

Taxation.

160A-211. Privilege license taxes.

Article 12.

Sale and Disposition of Property.

Sec.
160A-266. Methods of sale; limitation.

Article 13.

Law Enforcement.

160A-284. Oath of office; holding other offices.
160A-288. Cooperation between law-enforcement agencies.
160A-303. Removal and disposal of junked and abandoned motor vehicles.

Article 16.

Public Enterprises.

Part 1. General Provisions.

160A-314. Authority to fix and enforce rates.
160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

Part 2. Electric Service in Urban Areas.

160A-331. Definitions.
160A-332. Electric service within city limits.

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

160A-360. Territorial jurisdiction.
160A-361. Planning agency.
160A-362. Extraterritorial representation.
160A-364.1. Statute of limitations.

Part 2. Subdivision Regulation.

Sec.
160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Part 3. Zoning.

160A-381. Grant of power.
160A-384. Method of procedure.

Part 6. Minimum Housing Standards.

160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.
160A-445. Service of complaints and orders.

Part 8. Miscellaneous Powers.

160A-456. Community development programs and activities.
160A-457.2. Urban homesteading programs.

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

160A-460. Definitions.

Part 3. Regional Sports Authorities.

160A-480. [Reserved.]

Part 4. Facility Authorities.

160A-480.1. Short title.
160A-480.2. Definitions.
160A-480.3. Creation of Authority; additional membership.
160A-480.4. Powers of an Authority.
160A-480.5. Dissolution of Authority.
160A-480.6. Construction contracts.
160A-480.7. Seating at regional facility arena.
160A-480.8. Bonds.
160A-480.9. Trust agreement or resolution.
160A-480.10. Trust funds.
160A-480.11. Faith and credit of State and units of local government not pledged.
160A-480.12. Revenue refunding bonds.
160A-480.13. Bonds eligible for investment.
160A-480.14. Taxation of revenue bonds.
160A-480.15. Members and officers not liable.
160A-481 through 160A-484. [Reserved.]

Article 22.

Urban Redevelopment Law.

Sec.
160A-516. Issuance of bonds.

Article 26.

Regional Public Transportation Authority.

160A-623. Regional Transportation Authority registration tax.

Article 27.

Regional Transportation Authority.

160A-630. Title.
160A-631. Definitions.
160A-632. Definition of territorial jurisdiction of Authority.
160A-633. Creation of Authority.
160A-634. Territorial jurisdiction and service area of the Authority.
160A-635. Membership; officers; compensation.
160A-636. Voting.
160A-637. Advisory committees.
160A-638. Purpose of the Authority.
160A-639. General powers of the Authority.
160A-640. Authority of Utilities Commission not affected.
160A-641. Fiscal accountability.
160A-642. Funds.
160A-643. Competition.
160A-644. Effect on existing franchises and operations.
160A-645. Termination.
160A-646. Controlling provisions.
160A-647. Bonds and notes authorized.
160A-648. Equipment trust certificates.
160A-649. Power of eminent domain.
160A-650. Tax exemption.
160A-651. Removal and relocation of utility structures.

Article 28.

Regional Natural Gas District.

160A-660. Title.
160A-661. Purpose; definitions.
160A-662. Territorial jurisdiction and service area of district.
160A-663. Creation of district.
160A-664. Membership; officers; compensation.
160A-665. Quorum.
160A-666. Advisory committees.
160A-667. General powers of the district.
160A-668. Fiscal accountability.

Sec.
160A-669. Funds.
160A-670. Effect on existing franchises and operations.
160A-671. Termination of district.
160A-672. Joinder of county or city.
160A-673. Bonds and notes authorized.

Sec.
160A-674. Acquisition, power of eminent domain.
160A-675. Tax exemption.
160A-676. Authority to fix and enforce rates.

ARTICLE 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

CASE NOTES

Quoted in Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653 (1994).

§ 160A-4. Broad construction.

CASE NOTES

Quoted in Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994); Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

ARTICLE 3.

Contracts.

§ 160A-16. Contracts to be in writing; exception.

CASE NOTES

Cited in Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-20. Security interests.

(a) Units of local government, as defined in subsection (h), may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Units of local government, as defined in subsection (h), may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) Units of local government, as defined in subsection (h), may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or
(2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(f) No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) As used in this section, the term “unit of local government” means any of the following:

(1) A county.
(2) A city.
(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.
(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).
(9) A baseball park district.
(10) A regional natural gas district, as defined by Article 28 of this Chapter. (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1.)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Session Laws 1997-426, s. 7.1, provided that if Ratified Senate Bill 389, 1997 Regular Session, became law, then subdivision (h)(9) was recodified as subdivision (h)(10) of this section. Senate Bill 389 became S.L.1997-380, which became law on August 7, 1997.

Session Laws 1997-426, s. 10(a), (b), and (c), provide that, insofar as the provisions of that act are not consistent with the provisions of any other law, public or private, the provisions of that act shall be controlling; that references in that act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly; and that that act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

Session Laws 1997-426, s. 10(d), is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 19, 1995, added subdivision (h)(8).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subdivision (h)(5a).

Session Laws 1997-380, s. 3, effective August 7, 1997, added subdivision (h)(9).

Session Laws 1997-426, s. 7, effective August 22, 1997, added subdivision (h)(9) [(h)(10)].

ARTICLE 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Local Modification. — New Hanover: 1997-415; (As to Article 4A) city of Reidsville: 1997-360; (As to Article 4A) town of Swepsonville: 1997-448, s. 2.

For additional local modifications to this section, see the main pamphlet.

§ 160A-31. Annexation by petition.

Local Modification. — City of Reidsville: 1997-343.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Property Not Contiguous. — At the time town purported to annex defendant counties' property, the property was not contiguous and the attempted annexation was invalid. Town of Valdese v. Burke, Inc., 125 N.C. App. 688, 482 S.E.2d 24 (1997).

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy.

Local Modification. — City of Hendersonville and town of Laurel Park: 1997-188.

For additional local modifications to this section, see the main pamphlet.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by § 160A-37(e)(3) and subdivision (3)b to insure that residents of the area to be annexed would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-36. Character of area to be annexed.

Local Modification. — Town of Catawba: 1995, c. 230, s. 1.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

IV. Boundaries.

IV. BOUNDARIES.

Proof of Noncompliance with Subsection (d). — In order to establish noncompliance with subsection (d) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow natural topographic features, and (2) that it would have been practical for the boundary to follow such features. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982); Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985); Weeks v. Town of Coats, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

Topographic Features Not Followed. — There was sufficient evidence to support the court's conclusion that the town did not attempt to follow topographic features in violation of § 160A-36(d). Weeks v. Town of Coats, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

§ 160A-37. Procedure for annexation.

CASE NOTES

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by subdivision (e)(3) and § 160A-35(3)b to insure that residents of the area to be annexed would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-38. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or
(2) That the provisions of G.S. 160A-35 were not met, or
(3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal. (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7; 1989, c. 598, s. 7; 1995 (Reg. Sess., 1996), c. 746, s. 4.)

Editor's Note. —
The subsection designation (k) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 4, having been (*l*).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective on and after January 1, 1996, added subsection (k).

CASE NOTES

Who May Appeal. — Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

Local Modification. — City of Hendersonville and town of Laurel Park: 1997-188.

For additional local modifications to this section, see the main pamphlet.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

I. In General.
III. Plans for Extending Services.
  A. In General.

I. IN GENERAL.

Purpose. — The purpose of this statute is to insure that, in return for the financial burden of city taxes, annexed residents receive all major city services. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Providing Forms to Property Owners. — Subdivision (3)(b) does not require the city to provide notice to the property owners that they may request a form providing for extension of lines to their property in accordance with the financial policies of the city, and in the absence of a request, the city is not required to provide forms to property owners to be used to request extensions from their property to a major main in accordance with the city financial policies for such extensions. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Other Anticipated Services Need Not Be Included. — Municipal services, such as transportation, which are not specifically enumerated in subsection (3) are not required to be included in the annexation report. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Since plans and procedures concerning transportation are not required by law, a reviewing court has no jurisdiction to hear evidence on this issue. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Applied in Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-49. Procedure for annexation.

Local Modification. — City of Reidsville: 1997-343.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Form for Extension. — This section, which specifically describes the procedure of annexation and the information that is required to be provided to residents of an area to be annexed, does not require that the city furnish the form described in § 160A-47 without a request. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

The proper forum for attacking the accuracy of projected costs and other items in the report not required by statute is the hearing before the city council provided under this section. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Where materials delivered to the court did not include a certificate that notice of the public hearing was mailed to all the property owners in the affected area as required by subsection (b), but there was ample evidence that the notices were actually mailed and no contention that the property owners did not receive the mailed notices, this irregularity was so slight that it could not have prejudiced petitioner, and it did not require remand of the ordinance. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Extension of Fire and Police Service. — Although city did not need to provide the details of how it intended to extend fire and police service to the annexed area, the city did provide this information to petitioners at the hearing; further, if the city failed to provide the services as promised within the statutory time limits, petitioners could apply for a writ of mandamus. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

§ 160A-50. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed, or
(2) That the provisions of G.S. 160A-47 were not met, or
(3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

(*l*) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1; 1989, c. 598, s. 10; 1995 (Reg. Sess., 1996), c. 746, s. 3.)

Editor's Note. — The subsection designation (*l*) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 3, having been (m).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective on and after January 1, 1996, added subsection (*l*).

CASE NOTES

I. In General.

I. IN GENERAL.

Who May Challenge Annexation Ordinance. — Where the record of the annexation proceedings showed substantial compliance with the requirements of Chapter 160A, the burden was on petitioners to prove failure to meet those requirements or an irregularity in the proceedings which materially prejudiced their substantive rights. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997).

No Jurisdiction Over Plans Concerning Transportation. — Since plans and procedures concerning transportation are not required by law, a reviewing court has no jurisdiction to hear evidence on this issue. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Quoted in Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Cited in Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

Local Modification. — Towns of Moorehead City and Newport: 1997-219, s. 1; 1997-363, s. 1.1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-58.1. Petition for annexation; standards.

Local Modification. — City of Greensboro: 1997-344, s. 1; city of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Mooresville, 1995, c. 82, s. 1; city of Reidsville: 1997-343; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; town of Apex: 1995, c. 82, s. 1; town of Beaufort: 1997-432, s. 1 (subsection (b)(5) does not apply to annexation of Harry Taylor Farms property to Beaufort); town of Catawba (subsection (b)(5) doesn't apply to town of Catawba): 1997-2, s. 1; town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Hope Mills: 1997-151, s. 1; town of Madison: 1997-251, s. 2 (subsection (b)(2) doesn't apply to Madison); town of Pleasant Garden: 1997-344, s. 1; towns of Summerfield and Leland: 1997-249; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1; town of Wake Forest: 1997-432, ss. 1(a), 1(b); town of Weaverville: 1997-151, s. 2; town of Mooresville: 1997-219, s. 2, deleted from 1995, c. 82, s. 2 (now applies only to town of Apex); town of Mooresville: 1997-219, s. 3 (subsection (b)(5) doesn't apply to Mooresville).

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Town Had No Standing to Challenge Annexations. — Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997).

Cited in Town of Valdese v. Burke, Inc., 125 N.C. App. 688, 482 S.E.2d 24 (1997).

§ 160A-58.2. Public hearing.

Local Modification.. — City of Reidsville: 1997-343; By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 160A-58.4. Extraterritorial powers.

Local Modification. — Town of Mooresville: 1997-219, s. 4.

For additional local modifications to this section, see the main pamphlet.

§ 160A-58.7. Annexation of municipal property.

Local Modification. — City of Reidsville: 1997-343.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1; town of Tarboro: 1995, c. 73, s. 3.2.

§ 160A-63. Vacancies.

Local Modification. — Cedar Rock: 1997-317, s. 2; city of Roanoke Rapids: 1995, c. 34, s. 1; city of Trinity: 1997-44, s. 3 (contingent on referendum); town of Tarboro: 1995, c. 73, s. 1.

For additional local modifications to this section, see the main pamphlet.

Part 2. Mayor and Council.

§ 160A-67. General powers of mayor and council.

CASE NOTES

Cited in Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

Part 3. Organization and Procedures of the Council.

§ 160A-70. Mayor pro tempore; disability of mayor.

Local Modification. — Town of Mount Holly: 1995 (Reg. Sess., 1996), c. 620, s. 1.

§ 160A-74. Quorum.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1.

§ 160A-81. Conduct of public hearings.

CASE NOTES

Application to Annexation Hearings. — Nothing in this section indicates that its application should be limited to public hearings not concerning annexation. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Article 7.

Administrative Offices.

Part 2. Administration of Council-Manager Cities.

§ 160A-147. Appointment of city manager; dual office holding.

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;
(2) The city is located in two counties; and
(3) The population of the county in which the city manager resides does not exceed 40,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.
(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this section, the city manager may complete the term of elected office that the city manager is then serving. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1989, c. 49; 1997-25, s. 1.)

Effect of Amendments. — The 1997 amendment, effective April 17, 1997, in subsection (a) substituted "the manager's" for "his" preceding "executive", "The manager" for "He" following "qualifications", deleted "his" preceding "appointment"; in subsection (b) substituted "that" for "which"; added subsection (c); added the subsection (d) designation, at the beginning of subsection (d) substituted "For the purposes of this section" for "The", and near the end of subsection (d) substituted "section" for "subsection" and substituted "of elected office that the city manager" for "on the county board of education which he".

Part 4. Personnel.

§ 160A-163. Retirement benefits.

(a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries.

(e) A city which is providing health insurance under G.S. 160A-162(b) may provide health insurance for all or any class of former employees of the city who are receiving benefits under subsection (a) of this section or who are 65 years of age or older. Such health insurance may be paid entirely by the city, partly by the city and former employee, or entirely by the former employee, at the option of the city.

(f) The council may provide a deferred compensation plan. Where the council provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S 159-30 and G.S. 159-31. Cities may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(g) Should the council provide for a retirement plan, a plan which supplements a State-administered plan, or a special fund, any benefits payable from such plan or fund on account of the disability of city employees may be restricted with regard to the amount which may be earned by the disabled former employee in any other employment, but only to the extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted in accordance with G.S. 128-27(e)(1). (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1981, c. 347, s. 2; 1991, c. 277, s. 2; 1995, c. 259, s. 3.)

Effect of Amendments. — The 1995 amendment, effective December 31, 1995, added subsection (g).

§ 160A-167. Defense of employees and officers; payment of judgments.

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 160A-168. Privacy of employee personnel records.

Local Modification. — Charlotte: 1997-305, s. 3.

For additional local modifications to this section, see the main pamphlet.

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995).

§ 160A-176.2. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Cape Carteret, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Long Beach, Manteo, Nags Head, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, Wrightsville Beach, and Yaupon Beach, and the City of Southport only. (1991, c. 494, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 801; 1993, c. 67, s. 5; c. 125, s. 2; 1993 (Reg. Sess., 1994), c. 625, s. 1; 1997-48, s. 1.)

Effect of Amendments. — The 1997 amendment, effective May 12, 1997, inserted "Manteo" in subsection (b).

§ 160A-184. Noise regulation.

Local Modification. — Town of Kill Devil Hills: 1995, c. 84, s. 1; town of Kitty Hawk: 1995, c. 84, s. 1; town of Manteo: 1995, c. 196, s. 4; town of Nags Head: 1995, c. 84, s. 1; town of Southern Shores: 1995, c. 84, s. 1.

§ 160A-197: Repealed by Session Laws 1995, c. 501, s. 4, effective July 28, 1995.

§ 160A-198. Curfews.

A city may by an appropriate ordinance impose a curfew on persons of any age less than 18. (1997-189, s. 1.)

Editor's Note. — Session Laws 1997-189, s. 3, made this section effective June 18, 1997.

ARTICLE 9.

Taxation.

§ 160A-211. Privilege license taxes.

(a) Authority. — Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements — Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements — Outdoor theatres.
G.S. 105-37	Amusements — Moving pictures — Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. — A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 23.)

Editor's Note. — Section 105-77 referred to in subsection (a) has been repealed.

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1997, added the subsection (a) designation and subcatchline, added the second sentence of subsection (a); and added subsection (b).

ARTICLE 10.

Special Assessments.

§ 160A-217. Petition for street or sidewalk improvements.

Local Modification. — City of Beech Mountain: 1995, c. 133, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-232. Payment of assessments in cash or by installments.

Local Modification. — City of Fayetteville: 1995 (Reg. Sess., 1996), c. 718, s. 1.

§ 160A-237. Authority to hold water and sewer assessments in abeyance.

Local Modification. — Cities of Belmont, Gastonia, and Mount Holly: 1995, c. 341, s. 1; town of Stanley: 1995, c. 341, s. 1.

By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Cleveland: 1995, c. 201, s. 1; (As to Article 12) Sanford: 1995, c. 154, s. 1; (As to Article 12) Wayne: 1997-170, s. 1; city of Bessemer City: 1995 (Reg. Sess., 1996), c. 563, s. 1; (As to Article 12) city of Brevard: 1995 (Reg. Sess., 1996), c. 671, s. 1; (As to Article 12) city of Burlington: 1995 (Reg. Sess., 1996), c. 610, s. 1; 1997-445, s. 2; (As to Article 12) city of Lincolnton: 1995, c. 57, ss. 1, 2; city of Raleigh, city of Roanoke Rapids: 1997-39, s. 1; town of Cerro Gordo: 1995 (Reg. Sess., 1996), c. 708; town of Elkin: 1997-130; 1997-131; (As to Article 12) town of Maxton: 1995 (Reg. Sess., 1996), c. 576, s. 1; (As to Article 12) town of Red Springs: 1995, c. 203, s. 1; town of Waynesville: 1997-39, s. 1; Pender County Board of Education: 1996, 2nd Ex. Sess., c. 16, s. 1.

By virtue of Session Laws 1997-180, s. 2, Alamance: 1995 (Reg. Sess., 1996) c. 618, s. 1; Craven: 1995 (Reg. Ses.), c. 569, s. 2; city of Asheville: 1993 (Reg. Sess., 1994), c. 650, s. 1; city of Hendersonville: 1995, c. 106, s. 1; town of Moorsville: 1995 (Reg. Sess., 1996), c. 614, s. 1, should be stricken from the main volume.

By virtue of Session Laws 1995 (Reg. Sess., 1996), c. 700, Clinton Sampson Agri-Civic Center Commission: 1985 (Reg. Sess., 1986), c. 943, s. 2, should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

The citation to Tyrrell County: 1985, c. 9, in the main volume should be to Tyrrell County: 1987, c. 9.

Editor's Note. — Session Laws 1997-39 would have amended Session Laws 1993, c. 650, s. 2, to add the cities of Raleigh and Roanoke Rapids and the Town of Waynesville to that local modification; however, Session Laws 1993, c. 650, was repealed by Session Laws 1997-180, s. 2.

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than five thousand dollars ($5,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than five thousand dollars ($5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6.)

Editor's Note. — Session Laws 1997-174, s. 8, provides: "This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict."

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "thirty thousand dollars ($30,000)" for "ten thousand dollars ($10,000)" in the first and second sentences of subsection (b), substituted "property, of any value" for "property" in the second sentence of subsection (b); added "of any value" following "dispose of real property" and substituted "thirty thousand dollars ($30,000)" for "ten thousand dollars ($10,000)" in the proviso of subsection (b); and in subsection (c), twice substituted "five thousand dollars ($5,000)" for "five hundred dollars ($500)", "shall keep a record of all property sold under this section and that record" for the language beginning "shall, on the first" and ending "The written report", and deleted "since the last report was submitted" from the end.

§ 160A-272. Lease or rental of property.

Local Modification. — Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1.

By virtue of Session Laws 1995 (Reg. Sess., 1996), c. 700, city of Clinton: 1985 (Reg. Sess., 1986), c. 943, s. 2, should be stricken from the main volume.

By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

Local Modification. — Gaston: 1995, c. 399, ss. 1, 3; Greene: 1995, c. 399, ss. 1, 3; Halifax: 1995 (Reg. Sess., 1996), c. 706; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Reg. Sess., 1996), c. 706; Sampson: 1995, c. 399, ss. 1, 3; Wilson: 1995 (Reg. Sess., 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Purchase and Gift of Property Improper. — County exceeded its statutory authority where it purchased land and gave it to the State as an enticement for the building of a State prison. Carter v. Stanly County, 125 N.C. App. 628, 482 S.E.2d 9 (1997).

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

Local Modification. — By virtue of Session Laws 1995, c. 56, s. 1, the city of Greensboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 13.

Law Enforcement.

§ 160A-284. Oath of office; holding other offices.

Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk. The offices of policeman, chief of police, and auxiliary policeman are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office pursuant to Article VI, Sec. 9, of the Constitution. (1971, c. 698, s. 1; c. 896, s. 4; 1975, c. 664, s. 10.)

Editor's Note. —
This section has been set out in the supplement to correct an error in the section as printed in the main pamphlet.

§ 160A-288. Cooperation between law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the requesting agency, he shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means only a municipal police department, a county police department, or a sheriff's department. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2). (1967, c. 846; 1971, c. 698, s.1; c. 896, s.4; 1977, c. 534; 1981, c. 93, s. 2; 1987, c. 671, s. 4; 1989, c. 518, s. 2; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 6; 1997-143, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, in subdivision (d)(2) substituted "Chapter 74E; and" for "Chapter 74E", and added subdivision (d)(3).

ARTICLE 14.

Fire Protection.

§ 160A-293. Fire protection outside city limits; immunity; injury to firemen.

CASE NOTES

A city's purchase of liability insurance does not deprive it of immunity under subsection (b). Askew Kawasaki, Inc. v. City of Elizabeth City, 124 N.C. App. 453, 477 S.E. 2d 85 (1996).

Department Not Negligent. — Where the fire department's alleged acts of negligence could not fairly be characterized as either a "failure" or a "delay" under the statute in answering plaintiffs' 911 call, this section was inapplicable to the circumstances set forth in plaintiffs' complaint. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995).

Immunity of Municipalities. — While this statute establishes immunity for a municipality in certain circumstances, its purview is limited only to the municipality and not to officers and employees thereof. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995).

Article 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

CASE NOTES

I. In General.
III. Duty to Keep Streets, etc., Free from Obstructions.

I. IN GENERAL.

Including Road on Town Map Insufficient Evidence of Intent to Accept. — Simply including a road on the town map is insufficient evidence of the town's intent to accept the road for public use; to accept the road for public use, the proper authorities must accept the offer in some recognized legal manner. Wiggins v. Short, 122 N.C. App. 322, 469 S.E.2d 571 (1996).

Maintenance of Road May Provide Evidence of Intent to Accept. — Town or city maintenance of a roadway may be some evidence of acceptance of the road for public use; however, evidence that the town maintained the road for purposes of its water drain easement and not for the public generally was competent to rebut the conclusion that it was a public road. Wiggins v. Short, 122 N.C. App. 322, 469 S.E.2d 571 (1996).

Cited in Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995); Williams v. City of Durham, 123 N.C. App. 595, 473 S.E.2d 665 (1996).

III. DUTY TO KEEP STREETS, ETC., FREE FROM OBSTRUCTIONS.

Obstruction on Private Property. — Where tree which plaintiff contended obstructed her view was located on private property, town had no duty to exercise control over this property and therefore owed no duty to the plaintiff. Lavelle v. Schultz, 120 N.C. App. 857, 463 S.E.2d 567 (1995).

§ 160A-297. Streets under authority of Board of Transportation.

CASE NOTES

City Not Responsible for "Controlled Access" Areas. — All areas within the boundaries of the "controlled access" area are part of the State Highway system and were excepted from contract between the city and NCDOT; thus, city was not responsible for dangerous conditions within the "controlled access" areas. Eakes v. City of Durham, 125 N.C. App. 551, 481 S.E.2d 403 (1997).

Quoted in Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

§ 160A-301. Parking.

CASE NOTES

Parking Improvements Permissible. — Parking improvements made by town constituted permissible on-street parking; thus, the trial court erred in granting plaintiff's motion for summary judgment. March v. Town of Kill Devil Hills, 125 N.C. App. 151, 479 S.E.2d 252 (1996).

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(b1) An abandoned motor vehicle is one that:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the city for longer than 24 hours; or

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days.

(b2) A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five years old and worth less than one hundred dollars ($100.00); or

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13; 1997-456. s. 27.)

Editor's Note. — Subdivisions (b1) and (b2) were inserted pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Local Modification. — City of Winston-Salem: 1995, c. 92, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

Local Modification. — City of Lumberton: 1995, c. 53, ss. 1, 2.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

Local Modification. — Town of Kure Beach: 1997-94.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Cited in Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994); Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995); Stout v. City of Durham, 121 N.C. App. 716, 468 S.E.2d 254 (1996).

§ 160A-312. Authority to operate public enterprises.

CASE NOTES

I. In General.
III. Water and Sewage Service.

I. IN GENERAL.

Cited in Stout v. City of Durham, 121 N.C. App. 716, 468 S.E.2d 254 (1996).

III. WATER AND SEWAGE SERVICE.

Town Authorized to Extend Water Lines. — When the water service being provided by plaintiff water service to annexed area was no longer equal to the water service being provided by the town to other areas within the municipal boundaries, the town had the authority, pursuant to this section, to extend its water lines to the annexed area. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

By offering water users in annexed area with the option, rather than requirement, to connect to the town's water system at reduced fees, the town was simply providing those users with the same opportunity as it had historically given to water users in other areas to which it had extended service. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-314. Authority to fix and enforce rates.

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, added subsection (a2).

CASE NOTES

Cited in Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. — A city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(b) Solid Waste. — A city may require an owner of improved property to do any of the following:

(1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.

(2) Separate materials before the solid waste is collected.

(3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.

(4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14: 1981, c. 823; 1989, c. 741, s. 2; 1991, c. 698, s. 2; 1993, c. 165, s. 2; 1995, c. 511, s. 4.)

Editor's Note. —

Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in the first sentence of subsection (a) substituted "developed property on which there are situated one or more residential dwelling units or commercial establishments", for "improved property", deleted "upon or" preceding "within a reasonable distance", substituted "owned, leased as lessee, or" for "owned or leased and", and added "or on behalf of the city".

Part 2. Electric Service in Urban Areas.

§ 160A-331. Definitions.

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) "Assigned area" means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) "Assigned supplier" means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1b) The "determination date" is
- a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
- b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
- c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) "Line" means any conductor located inside the city for distributing or transmitting electricity, other than
- a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and
- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) "Primary supplier" means a city that owns and maintains its own electric system, or a person, firm, or corporation

that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) "Secondary supplier" means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 52; 1997-346, s. 1.)

Editor's Note. — Session Laws 1997-346, s. 6, provides: "This act expires on the date of the adjournment sine die of the 1999 General Assembly."

Effect of Amendments. — The 1997 amendment, effective July 31, 1997, and applicable only to annexations or incorporations that occur on or after the effective date, added subdivisions (1) and (1a), and redesignated former subdivision (1) as subdivision (1b).

CASE NOTES

Legislative Intent. —

The Electric Act of 1965 was originally intended to prevent or reduce litigation regarding electric service rights between competing suppliers. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

In situations in which multiple annexations have occurred, the determination date is the annexation date in which a primary and secondary supplier competing for the right to service a premises initially requiring electric service first existed. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Applied in City of Concord v. Duke Power Co., 122 N.C. App. 248, 468 S.E.2d 615 (1996).

§ 160A-332. Electric service within city limits.

(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

(7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1997-346, s. 2.)

Editor's Note. — Session Laws 1997-346, s. 6, provides: "This act expires on the date of the adjournment sine die of the 1999 General Assembly."

Effect of Amendments. — The 1997 amendment, effective July 31, 1997, and applicable only to annexations or incorporations that occur on or after the effective date, substituted "(3), and (6a)" for "and (3)" in subdivision (a)(4), added subdivision (a)(6a), and substituted "(6), and (6a)" for "and (6)" in subdivision (a)(7).

CASE NOTES

Legislative Intent. —
The Electric Act of 1965 was originally intended to prevent or reduce litigation regarding electric service rights between competing suppliers. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

In situations in which multiple annexations have occurred, the determination date is the annexation date in which a primary and secondary supplier competing for the right to service a premises initially requiring electric service first existed. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Applied in City of Concord v. Duke Power Co., 122 N.C. App. 248, 468 S.E.2d 615 (1996).

§ 160A-338. Electric suppliers subject to police power.

CASE NOTES

Cited in City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning agency and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed by Session Laws 1973, c. 669, s. 1. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3; 1973, c. 426, s. 56; c. 525; c. 669, s. 1; 1977, c. 882; c. 912, ss. 2, 4; 1995 (Reg. Sess., 1996), c. 746, s. 1.)

Local Modification. — Towns of Cornelius and Davidson: 1997-106; town of Huntersville: 1995, c. 364, ss. 3.1, 3.2; 1997-106; town of River Bend: 1997-363, s. 1; town of Taber City: 1997-281, s. 2; town of Williamston: 1997-281, s. 1.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, inserted subsection (a1).

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

§ 160A-361. Planning agency.

(a) Any city may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the council concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;

(7) Perform any other related duties that the council may direct.

(b) An agency created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;

(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27.)

Editor's Note. — The subsection (a) and (b) designations were inserted pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, deleted "with such staff as the council may deem appropriate" following "one or more of the following", and substituted "with not fewer" for "not less" in subdivision (b)(1).

§ 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency or agencies provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning agency and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning agency or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning agency or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning agency and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning agency or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the agency to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; 1983, c. 584, ss. 1-4; 1995 (Reg. Sess., 1996), c. 746, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "proportional representation based on population" for "representation" in the first sentence; substituted "at least one resident of the entire extraterritorial zoning and subdivision regulation area" for "residents of the area" in the second sentence; and inserted the present third, fourth, seventh, eighth, ninth, tenth, and eleventh sentences.

§ 160A-364. Procedure for adopting or amending ordinances under Article.

Local Modification. — City of Fayetteville: 1995 (Reg. Sess., 1996), c. 684.

For additional local modifications to this section, see the main pamphlet.

§ 160A-364.1. Statute of limitations.

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "two" for "nine" following "shall be brought within".

CASE NOTES

Injury in Clear and Concrete Fashion. — Plaintiffs' cause of action, for statute of limitations purposes, arose at the time the city's billboard ordinance first became effective because it was then that the regulation injured plaintiffs' property in clear and concrete fashion. Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d 289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

Cited in Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996).

Part 2. Subdivision Regulation.

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The city council,
(2) The city council on recommendation of a planning agency, or
(3) A designated planning agency.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1997-309, s. 8.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, in the last paragraph, substituted "effective date of a subdivision ordinance that is adopted by the city" for "time that a subdivision ordinance is filed with the register of deeds of the county", substituted "an authorized representative of the city" for "the chairman or head of the agency", substituted "Review Officer, pursuant to G.S. 47-30.2, shall not certify" for "register of deeds shall not file or record", and deleted the last sentence, which read "The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision regulation jurisdiction of any city."

§ 160A-376. Definition.

Local Modification. — Harnett: 1997-246, s. 2; town of Rose Hill: 1995 (Reg. Sess., 1996), c. 565, s. 1.

Part 3. Zoning.

§ 160A-381. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits.

(b) **(Expires June 30, 2001)** Specifically, the city may require that a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, or may have an overlay district wherein a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, and the ordinance may provide that the permit may be issued only upon a finding that the pawnshop would not be deleterious to the neighborhood in which it is to be located. Conditions and safeguards on permits for pawnshops may be imposed notwithstanding G.S. 91A-12. This subsection applies only to cities with a population of 200,000 or over, which have a median family income of forty thousand dollars ($40,000) or over, according to the most recent decennial federal census.

(c) Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1.)

Editor's Note. — Session Laws 1995, c. 357, s. 2, provides that subsection (b) as enacted by s. 1 expires June 30, 2001.

Effect of Amendments. — The 1995 amendment, effective June 29, 1995, added the subsection (a) and (c) designations, and added subsection (b).

CASE NOTES

I. In General.
II. Power to Zone.
III. Zoning Ordinances, Generally.

I. IN GENERAL.

Applied in Hayes v. Fowler, 123 N.C. App. 400, 473 S.E.2d 442 (1996).

Cited in Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994); Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

II. POWER TO ZONE.

Promoting the general welfare of the community through control of lot size and population density is a legitimate use of the police power. Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996).

III. ZONING ORDINANCES, GENERALLY.

The test of whether the means of the regulation of land use are reasonable is two pronged: 1) whether the ordinance as applied is reasonably necessary to promote the public good and, 2) whether the interference with the owner's right to use the property is reasonable in degree. Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996).

§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1.)

Editor's Note. —

Session Laws 1995, c. 546, which amended this section , in s. 2.1 provides: "Any local act in conflict with this act is repealed to the extent of the conflict."

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in subsection (a), in the second sentence, substituted "map amendment" for "classification action involving a parcel of land" following "zoning", substituted "a public hearing on the proposed amendment" for "the proposed classification" following "mailed a notice of", and added the third sentence; and rewrote subsection (b).

§ 160A-385. Changes.

CASE NOTES

I. In General.
II. Protests.

I. IN GENERAL.

Vested Rights Under Building Permit. —

Plaintiffs acquired vested rights under this section by virtue of the issuance of building permit by town, which the North Carolina General Assembly prohibited interference with by subsequent governmental action. Browning-Ferris

Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

Vested Rights Under Common Law. — Regardless of whether subsection (b) and § 160A-385.1 were applicable, under North Carolina common law, plaintiffs' rights to develop tract of land had vested where plaintiffs incurred substantial expenditures in reliance on site plan approval and the issuance of building permit by town, and plaintiffs' efforts following the site plan approval were undertaken in good faith and under reasonable reliance on the validity of the approvals they had been granted. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

II. PROTESTS.

Permit issued to respondent was not a building permit under subsection (b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by § 160A-417 and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-385.1. Vested rights.

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

CASE NOTES

Vested Rights Under Building Permits. — Plaintiffs acquired vested rights under § 160A-385 by virtue of the issuance of building permit by town, which the North Carolina General Assembly prohibited interference with by subsequent governmental action. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

Vested Rights Under Common Law. — Regardless of whether § 160A-385(b) and this section were applicable, under North Carolina common law, plaintiffs' rights to develop tract of land had vested where plaintiffs incurred substantial expenditures in reliance on site plan approval and the issuance of building permit by town, and plaintiffs' efforts following the site plan approval were undertaken in good faith and under reasonable reliance on the validity of the approvals they had been granted. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

North Carolina recognizes two methods for a landowner to establish a vested right in a zoning ordinance: (1) qualify with relevant statutes (§§ 153A-344.1, 160A-385.1) or (2) qualify under the common law. Browning-Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment, — N.C. App. —, 484 S.E.2d 411 (1997).

Cited in Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-386. Protest petition; form; requirements; time for filing.

Local Modification. — City of Durham: 1997-452, s. 8.

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Appellate Jurisdiction of Board. — Town board of adjustment did not have jurisdiction to review and reverse the decision of the town board of commissioners. Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653, cert. denied, 337 N.C. 692, 448 S.E.2d 523 (1994).

Applied in Shoney's of Enka, Inc. v. Board of Adjustment ex rel. City of Asheville, 119 N.C. App. 420, 458 S.E.2d 510 (1995).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994); Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994); Budd v. Davie County, 116 N.C. App. 168, 447 S.E.2d 449 (1994).

II. JUDICIAL REVIEW.

Scope of Judicial Review. — The superior court, pursuant to a writ of certiorari under subsection (e), only has the power to review the issue of whether a permit was properly granted or denied. Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

Part 5. Building Inspection.

§ 160A-411. Inspection department.

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

CASE NOTES

Local Laws Providing for Performance of Inspections Unconstitutional. — Inspections pursuant to the State Building Code affect health and sanitation, thus acts that altered the legislative directive of this section that the city shall determine who will perform the inspections under the Code were local legislation that shifted responsibility for enforcement of laws affecting the health of the public and were barred under Art. II, § 24 of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Acts Shifting Responsibility for Inspections Created Unreasonable Classification. — No rational basis justified the separation of New Bern from all other cities in North Carolina for special legislative attention regarding the designation of an appropriate inspection department, and acts which shifted the responsibility for enforcing the building code from New Bern to Craven County created an unreasonable classification and were therefore local acts. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Failure of City and County to Agree on Provision of Inspection Services. — This section does not mandate that the city and the county must agree regarding the provision of inspection services; rather, it provides the options available to the city in determining who shall perform the inspections, one of which is arranging for the county to perform them, and if the city fails to provide inspection services via any of the four options, the statute dictates that the Commissioner of Insurance shall arrange for the provision of the services. The legislature does not need to intervene in the process should the county and the city fail to agree; instead, the legislature has provided that the Commissioner of Insurance shall do so should the city fail to follow the requirements of the statute. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Special Duty Exception. — To bring themselves within the special duty exception to the public duty doctrine, plaintiffs must show that an actual promise was made to create the special duty, the promise was reasonably relied upon by plaintiffs, and that the plaintiffs' injury was causally related to such reliance. Sinning v. Clark, 119 N.C. App. 515, 459 S.E.2d 71 (1995).

The provisions of G.S. § 160A-411 et seq. and the North Carolina State Building Code did not create a special duty owed by defendants to plaintiffs over and above the duty owed to the general public; thus, the allegations of plaintiffs' complaint were insufficient to state a claim for relief for negligence. Sinning v. Clark, 119 N.C. App. 515, 459 S.E.2d 71 (1995).

Not Shown. — Dismissal of plaintiffs' negligence action against building inspector and county was proper where plaintiff homeowners did not fall within either exception to the public duty doctrine as they did not show a special relationship or special duty between themselves and the defendants. Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 160A-412. Duties and responsibilities.

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

§ 160A-413. Joint inspection department; other arrangements.

Local Modification. — Town of Hillsborough: 1997-407, s. 1.

CASE NOTES

Quoted in City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 160A-417. Permits.

Local Modification. — Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Scotland: 1995, c. 124, s. 1; town of Sunset Beach: 1997-63.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Permit issued to respondent was not a building permit under § 160A-385(b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by this section and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-423. Certificates of compliance.

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

§ 160A-435. Establishment of fire limits.

CASE NOTES

Liability for Torts of Officers. — A municipality was not immune from liability for the torts of defendant officers to the extent of defendant town's liability insurance. Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995).

§ 160A-438. Failure to establish primary fire limits.

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

Part 6. Minimum Housing Standards.

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of 163,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in

or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and

the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698; 1987, c. 542; 1989, c. 562; 1991, c. 208, s. 1; c. 315, s. 1; c. 581, s. 1; 1993, c. 539, s. 1095; c. 553, ss. 58, 59; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 347, s. 1; c. 509, s. 112.)

Local Modification. — Municipalities in Lee County: 1997-449, s. 1; city of Bethel: 1997-414; city of Farmville: 1997-414; city of Greenville: 1997-414; city of Lumberton: 1995 (Reg. Sess., 1996), c. 733, s. 1; city of Newport: 1997-414; city of Roanoke Rapids: 1997-101; city of Trinity: 1997-44, s. 5.

By virtue of Session Laws 1995, c. 158, Buncombe, Transylvania, the cities of Asheville, Brevard, Charlotte, Gastonia, Greensboro, Hendersonville, and Wilmington should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 160A-445. Service of complaints and orders.

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(a1) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(b) Repealed by Session Laws 1997, c. 201, s. 1. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 14; 1979, 2nd Sess., c. 1247, s. 38; 1991, c. 526, s. 1; 1997-201, s. 1.)

Local Modification. — Conover: 1997-160; Forsyth: 1997-126; Sanford: 1997-160; city of Conover: 1997-93; city of Winston-Salem: 1997-126.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1997 amendment, effective June 19, 1997, and applicable to complaints or orders served on or after that date, in subsection (a) added the last two sentences, and at the beginning of the former second sentence added the subsection (a1) designation; in subsection (a1) inserted "or, if the owners are known but have refused to accept service by registered or certified mail", deleted "unknown" preceding "owners or other persons"; and deleted subsections

(b)(1) and (b)(2), concerning complaints
or orders issued in municipalities having
a population in excess of 300,000.

Part 8. Miscellaneous Powers.

§ 160A-456. Community development programs and activities.

(a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities, and may do so whether or not a redevelopment commission or housing authority is in existence in such city. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A city may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes.

(e) Repealed by Session Laws 1985, c. 665, s. 5.

(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in G.S. 143B-437A, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5; 1987, c. 464, s. 10; 1987 (Reg. Sess., 1988), c. 992, s. 2; 1995, c. 310, s. 3; 1995 (Reg. Sess., 1996), c. 13, s. 3.9; c. 575, s. 3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 575, s. 3, effective October 1, 1996, added the last sentence of the first paragraph of subsection (d1).

Session Laws 1996, Second Extra Session, c. 13, s. 3.9, effective August 1, 1996, in subsection (e1), substituted "'economically distressed counties', as defined in G.S. 143B-437A" for "'severely distressed counties', as designated under G.S. 105-130.40(c)" in the first sentence, and substituted "G.S. 143B-437A or G.S. 105-129.3" for "G.S. 105-130.40(c)" and substituted "economically" for "severely" in the last sentence.

§ 160A-457.2. Urban homesteading programs.

A city may establish a program of urban homesteading, in which residential property of little or no value is conveyed to persons who agree to rehabilitate the property and use it, for a minimum number of years, as their principal place of residence. Residential property is considered of little or no value if the cost of bringing the property into compliance with the city's housing code exceeds sixty percent (60%) of the property's appraised value on the county tax records. In undertaking such a program a city may:

(1) Acquire by purchase, gift or otherwise, but not eminent domain, residential property specifically for the purpose of reconveyance in the urban homesteading program or may transfer to the program residential property acquired for other purposes, including property purchased at a tax foreclosure sale.

(2) Under procedures and standards established by the city, convey residential property by private sale under G.S. 160A-267 and for nominal monetary consideration to persons who qualify as grantees.

(3) Convey property subject to conditions that:

- a. Require the grantee to use the property as his or her principal place of residence for a minimum number of years,
- b. Require the grantee to rehabilitate the property so that it meets or exceeds minimum code standards,
- c. Require the grantee to maintain insurance on the property,
- d. Set out any other specific conditions (including, but not limited to, design standards) or actions that the city may require, and
- e. Provide for the termination of the grantee's interest in the property and its reversion to the city upon the grantee's failure to meet any condition so established.

(4) Subordinate the city's interest in the property to any security interest granted by the grantee to a lender of funds to purchase or rehabilitate the property. (1987, c. 464, s. 8; 1997-456. s. 27.)

Editor's Note. — Subdivisions (3)(a) through (3)(e) were renumbered as subdivisions (3)a. through (3)b. pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3.)

Editor's Note. — Session Laws 1995, c. 458, s. 6, contains a severability clause.

Part 3. Regional Sports Authorities.

§ 160A-480: Reserved for future codification purposes.

Part 4. Facility Authorities.

§ 160A-480.1. Short title.

This Part is the "Facility Authority Act" and may be cited by that name. (1995, c. 458, s. 1.)

Editor's Note. — Session Laws 1995, c. 458, s. 6, contains a severability clause.

Session Laws 1995, c. 408, s. 9, made this Part effective upon ratification. The Act was ratified July 19, 1995.

§ 160A-480.2. Definitions.

The following definitions apply in this Part:

(1) Authority. — A Facility Authority.

(2) Credit facility. — An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.

(3) Member. — A person appointed to a facility authority.

(4) Par formula. — A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

- a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.
- b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(5) Regional facility. — A facility consisting of an arena, coliseum, or other buildings or both, or areas where sports, fitness, health, recreational, entertainment, or cultural activities can be conducted. The facility may be composed of buildings grouped into complexes or separated from each other and may include ancillary support facilities, such as those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, parking, and food services. The facility should be designed to attract to the State as many major regional, national, and international tournaments, events, championships, training centers, training camps, and headquarters for the governance of various sports, associations, and events as possible. The regional facility shall be constructed on land owned by the State. (1995, c. 458, s. 1.)

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. — An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) **(Effective until January 1, 1999)** Membership. — An authority shall have eight or 13 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Two members shall be appointed by the board of commissioners of that county;

b. Two members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census; and

c. One member shall be appointed jointly by the mayors of all the cities in that county.

The board of commissioners may not appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of

§ 160A-480.3(b) is set out twice. See notes.

this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(b) **(Effective January 1, 1999)** Membership. — An authority shall have eight or 17 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

  a. Four members shall be appointed by the board of commissioners of that county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;

  b. Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census;

  c. One member shall be appointed jointly by the mayors of all the cities in that county.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subdivision.

Neither the board of commissioners nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. — The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. — The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws which may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.
(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.
(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. — An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. — An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. — If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or
(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter. (1995, c. 458, s. 1; 1997-68, s. 1.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until January 1, 1999. The second version of subsection (b) set out above is effective January 1, 1999.

Effect of Amendments. — The 1997 amendment, effective January 1, 1999, in subsection (b) substituted "17" for "13" following "shall have eight"; in subdivisions (b)(1) and (b)(2) substituted "authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county" for "authority" at the end; in subdivision (b)(3)a. substituted the present language for "Two members shall be appointed by the board of commissioners of that county"; in subdivision (b)(3)b. substituted "Four" for "Two" at the beginning, and deleted "and" at the end; added the paragraph following (b)(3)c.; in the second to last paragraph in subsection (b) substituted "Neither the board of commissioners nor the city council" for "The board of commissioners may not"; in the last paragraph in subsection (b) added the text beginning with "The third member appointed" and ending with "is located within the county".

§ 160A-480.4. Powers of an Authority.

An Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Part. These powers may include any one or more of the following:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State or any of its agencies or political subdivisions, the United States, any member unit, or any private entity.

(2) To study, design, plan, construct, own, and operate a regional facility.

(3) To employ consultants and employees as may be required in the judgment of the Authority, to fix and pay their compensation from funds available to the Authority. In employing consultants, the Authority shall promote participation by minority businesses.

(4) To contract with any public or private entity, and The University of North Carolina or any constituent institution of The University of North Carolina may enter into any such contract if the function is one The University of North Carolina or any constituent institution of The University of North Carolina could undertake separately.

(5) To adopt bylaws for the regulation of its affairs and the conduct of its business, and to adopt rules in connection with the performance of its functions and duties.

(6) To adopt an official seal.

(7) To acquire and maintain administrative offices.

(8) To sue and be sued in its own name, and to plead and be impleaded.

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any real or personal property or interest therein.

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any of these purposes with respect to, any real or personal property or interest therein.

(12) Subject to the provisions of this Part, to pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including a leasehold interest, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by the Authority from any and all sources.

(13) Subject to the provisions of this Part, to borrow money to finance part or all of a regional facility, to issue revenue bonds or notes, to refund any revenue bonds or notes issued by the Authority, or to provide funds for other corporate purposes of the Authority.

(14) To use officers, employees, agents, and facilities of units of local government or constituent institutions of The University of North Carolina for purposes and upon the terms that are mutually agreeable between the Authority and the unit or institution.

(15) To develop and make data, plans, information, surveys, and studies of public facilities within the area where constituent institutions of The University of North Carolina are located, and to prepare and make recommendations in regard thereto.

(16) To set and collect fees and charges for the use of the regional facility.

(17) To pay for services rendered by underwriters, financial consultants, or bond attorneys in connection with the issuance of revenue bonds or notes of the Authority out of the proceeds of the bonds or notes. In employing consultants, underwriters, attorneys, and others, the Authority shall promote participation by minority businesses.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20. (1995, c. 458, s. 1.)

§ 160A-480.5. Dissolution of Authority.

The General Assembly may dissolve an authority if all bonds or notes issued by the Authority and all other obligations incurred by the Authority have been fully paid or satisfied. In such event any assets of the Authority shall become the property of the county authorized to levy a room occupancy and prepared food and beverage tax to be distributed to the Authority. (1995, c. 458, s. 1.)

§ 160A-480.6. Construction contracts.

Article 8 of Chapter 143 of the General Statutes applies to a construction contract of an Authority. An Authority may solicit bids on the basis of separate specifications for the branches or work described in G.S. 143-128(a) and on a single-prime contract basis and accept the lowest bid. (1995, c. 458, s. 1.)

§ 160A-480.7. Seating at regional facility arena.

The Authority shall ensure that at least fifty percent (50%) of the seats for an athletic event that is sponsored by a constituent institution of The University of North Carolina whose principal campus is in the territorial jurisdiction of the authority and is held at the arena of the regional facility are made available to students at that constituent institution and members of the general public. (1995, c. 458, s. 1.)

§ 160A-480.8. Bonds.

(a) Terms. — An Authority may provide for the issuance, at one time or from time to time, of bonds or notes to carry out its corporate purposes. The principal of, the interest on, and any premium payable upon the redemption of the bonds or notes shall be payable from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, from any available revenues or other funds provided for this purpose. The bonds or notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority. Notes and bonds shall mature at times determined by the Authority, not exceeding 40 years from the date of issue. The Authority shall determine the form and the manner of execution of the bonds or notes, and shall fix the denomination of the bonds or notes and the place of payment of principal and interest. In case an officer whose signature or a facsimile of whose signature appears on any bonds or notes ceases to be an officer before the delivery of the bond or note, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The Authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

Bonds or notes may be issued under this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau, or other agency of the State or of a political subdivision of the State, and without any other proceedings or conditions except as specifically required by this Part or the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds or notes which have been mutilated, destroyed, or lost.

(b) Use of Proceeds. — The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of a bond or note and with any trust agreement securing the bond or note. If the proceeds of a bond or note of any issue, by reason of increased construction costs or error in estimates or otherwise, is less than the cost, additional bonds or notes may in like manner be issued to provide the amount of the deficiency.

(c) Security. — Bonds or notes issued by an Authority may be secured in one or more of the following ways:

(1) By the revenues of the regional facility.

(2) By security interests in real or personal property or interest therein, including a leasehold interest, acquired with the proceeds of the bonds or notes or improved with the proceeds of the bonds or notes as described in subsection (e) of this section.

(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax. However, no action by a county to discontinue, decrease, or repeal a room occupancy tax shall become effective while previously issued bonds or notes secured by receipts from such a tax allocated to an authority by the county remain outstanding.

The security for the bonds or notes shall be specified in the resolution or trust instrument authorizing the bonds or notes.

(d) Revenues. — The Authority may pledge to the payment of its revenue bonds or notes the revenues from the regional facility, including revenues from improvements, betterments, or extensions to the facility. The Authority may establish, maintain, revise, charge, and collect such rates, fees, rentals, or other charges for the use, services, and facilities of or furnished by a regional facility and provide methods of collection of and penalties for nonpayment of these rates, fees, rentals, or other charges. Except as otherwise permitted, the rates, fees, rentals, and charges fixed and charged shall be in an amount that will produce sufficient revenues, with any other available funds, to meet the maintenance and operation expenses of the regional facility as well as any improvements and renewals and replacements to the facility, including reserves to pay the principal, interest, and redemption premium due, if any, on any bonds or notes secured by the facility, and to fulfill the terms of any agreements made by the Authority with the holders of bonds or notes secured by revenues of the facility.

(e) Security Interests. — Bonds or notes may be secured by security interests in any real or personal property or interest therein, including a leasehold interest, either acquired with the proceeds of bonds or notes, or upon which improvements are provided from the proceeds of bonds or notes. The security interest may cover all real and personal property acquired or improved or any portion of the property, except that if the property subject to the security interest is a leasehold interest, the security interest is not to the fee simple title. The Authority is authorized to enter into deeds of trust, mortgages, security agreements, and similar instruments as shall be necessary to carry out the powers in this subsection. Bonds or notes may also be secured by security interests in any real or personal property conveyed to the Authority.

In the event the Authority fails to perform its obligations with respect to the bonds or notes and foreclosure or similar sale of property subject to a security interest occurs, a deficiency judgment may not be rendered against the Authority except to the extent that the deficiency is payable from either revenues from the regional facility or from any revenues dedicated by act of the General Assembly to the Authority.

(f) Issuance. — The issuance of bonds or notes of the Authority is subject to the approval of the Local Government Commission. Upon the filing with the Local Government Commission of a resolution of the Authority requesting that its bonds or notes be sold, the Commission shall determine the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the criteria for approval of revenue bonds under G.S. 159-86. The Local Government Commission shall approve the proposed issue if it determines the bond or note issue will meet such criteria and will effect the purposes of this Part. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interests of the Authority and to effect the purposes of this Part.

(g) Certification of Approval. — Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Part. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Part.

(h) State Pledge. — The State pledges to the holder of a bond or note issued under this Part that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the facility for which the bond or note was issued.

(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.

(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Part that the State will not impair the rights and remedies of the holder concerning the bond or note.

(i) Investment Securities. — All bonds and notes and interest coupons, if any, issued under this Part are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(j) Details of Bonds or Notes. — In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility

supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(2) Be additionally supported by a credit facility.
(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
(4) Be capital appreciation bonds.
(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(k) Basis of Investment. — In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
(3) Contracts to exchange cash flows or a series of payments.
(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section. (1995, c. 458, s. 1; 1997-68, s. 2.)

Effect of Amendments. — The 1997 amendment, effective May 20, 1997, added the last sentence in subdivision (c)(3).

§ 160A-480.9. Trust agreement or resolution.

In the discretion of the Authority, any bonds or notes issued under this Part may be secured by a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The trust instrument or the resolution of the Authority authorizing the issuance of bonds or notes may pledge and assign all or any part of the revenues, funds, and other property provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds, and condemnation awards, and may convey or mortgage property to secure a bond issue as provided in this Part.

The revenues and other funds derived from the project, except any part thereof that may be necessary to provide reserves therefor, if any, shall be set aside at regular intervals as may be provided in the resolution or trust instrument in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on the bonds or notes as they become due and of the redemption price or the purchase price of bonds retired by call or purchase as therein provided. This pledge shall be valid and binding from the time the pledge is made. The revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution or trust instrument. The resolution or trust instrument may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the resolution or trust instrument.
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.
(4) Rights to bring and maintain other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the resolution or trust instrument may be treated as a part of the cost of the project in connection with which bonds or notes are issued or as an expense of administration of the project.

The Authority may subordinate bonds or notes to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest securing bonds or notes.

Any owner of bonds or notes issued under the provisions of this Part or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Part or by the trust agreement or resolution by the Authority or by any officer of the Authority. (1995, c. 458, s. 1.)

§ 160A-480.10. Trust funds.

Notwithstanding any other provision of law to the contrary, all money received pursuant to the authority of this Part, whether as proceeds from the sale of bonds or notes or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Part. The resolution authorizing the issuance of, or the trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested and reinvested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose hereof, subject to any regulations this Part and the resolution or trust agreement may provide. Any of these moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1995, c. 458, s. 1.)

§ 160A-480.11. Faith and credit of State and units of local government not pledged.

Bonds or notes issued under this Part shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, property, and other funds pledged for their payment. The bonds or notes issued by an Authority shall contain a statement that the Authority is obligated to pay the bond or note or the interest on the bond or note only from the revenues, property, or other funds pledged for their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged as security for the payment of the principal of or the interest or premium on the bonds or notes. (1995, c. 458, s. 1.)

§ 160A-480.12. Revenue refunding bonds.

The Authority may issue refunding bonds or notes for one or more of the following purposes:

(1) Refunding any outstanding bonds or notes issued under this Part, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption.

(2) Constructing improvements, additions, extensions or enlargements of the project, or projects in connection with which the bonds or notes to be refunded have been issued.

(3) Paying all or any part of the cost of any additional project or projects.

Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds issued under this section may be sold or exchanged for outstanding bonds or notes issued under this Part and, if sold, the proceeds of the refunding bonds may be applied, in addition to any authorized purposes, to the purchase, redemption, or payment of outstanding bonds or notes.

Pending the application of the proceeds of refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1995, c. 458, s. 1.)

§ 160A-480.13. Bonds eligible for investment.

Bonds and notes issued under this Part are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is authorized by law. This section does not apply to any State pension or retirement fund or a pension or retirement fund of a political subdivision of the State. (1995, c. 458, s. 1.)

§ 160A-480.14. Taxation of revenue bonds.

Any bonds and notes issued by the Authority under the provisions of this Part shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes issued by an Authority under the provisions of this Part shall not be subject to taxation as to income. (1995, c. 458, s. 1.)

§ 160A-480.15. Members and officers not liable.

No member or officer of an Authority shall be subject to any personal liability or accountability by reason of the execution of any bonds or notes or the issuance of any bonds or notes. (1995, c. 458, s. 1.)

§§ 160A-481 through 160A-484: Reserved for future codification purposes.

ARTICLE 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

Editor's Note. —

The correct citation for Fowler v. Valencourt under this section in the main pamphlet is 108 N.C. App. 106.

Legal Periodicals. —

For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

CASE NOTES

Statutory Intent. — This statute was not meant to abrogate any statutory defenses available to a municipality. Askew Kawasaki, Inc. v. City of Elizabeth City, 124 N.C. App. 453, 477 S.E. 2d 85 (1996).

Waiver to the Extent of Coverage. — A municipality may waive governmental immunity by the purchase of liability insurance to the extent that the city or town is indemnified by the insurance contract from liability for the acts alleged. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995).

To the extent a city does not purchase liability insurance or participate in a local government risk, a city generally retains immunity from civil liability in tort. Young v. Woodall, 119 N.C. App. 132, 458 S.E.2d 225 (1995), rev'd on other grounds, 343 N.C. 459, 471 S.E.2d 357 (1996).

Methods of Waiver. — City may waive governmental immunity by the purchase of liability insurance or by joining a local government risk pool. Young v. Woodall, 119 N.C. App. 132, 458 S.E.2d 225 (1995), rev'd on other grounds, 343 N.C. 459, 471 S.E.2d 357 (1996).

This statute explicitly equates participation in a local government risk pool with the purchase of insurance for the purposes of a city's immunity from liability. Lyles v. City of Charlotte, 120 N.C. App. 96, 461 S.E.2d 347 (1995).

City Engaging in Proprietary Function Not Immune. — City which operated a natural gas supply utility was engaged in a proprietary function and, therefore, was not immune from liability for any torts which were proximately caused by it in providing this service. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Partial Immunity. — Where city was indemnified for claims in excess of $500,000 through its participation in a local government risk pool any claims for less than that amount were not indemnified because there was a $500,000 deductible for which the city was solely responsibile. Therefore, for claims of $500,000 or less the city retained its immunity. Wall v. City of Raleigh, 121 N.C. App. 351, 465 S.E.2d 551 (1996).

Waiver of Immunity When Engaging in Governmental Function. — Where a municipality engages in a governmental function, governmental immunity is applicable, and a city may waive its immunity from civil tort liability by purchasing liability insurance. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Allegations of Waiver Required. — If plaintiff does not allege a waiver of immunity by the purchase of insurance, the plaintiff has failed to state a claim against governmental unit or officer or employee. Morrison-Tiffin v. Hampton, 117 N.C. App. 494, 451 S.E.2d 650, appeal dismissed and cert. denied, 339 N.C. 739, 454 S.E.2d 654 (1995).

Superior Court Jurisdiction. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

Governmental Immunity Not for Public Officer. — Where a municipality waived its sovereign immunity by purchasing liability insurance, public officers were not entitled to the defense of governmental immunity, at least as to the extent of coverage purchased by the municipality. Moore v. Evans, 124 N.C. App. 35, 476 S.E.2d 415 (1996).

Illustrative Cases. — Plaintiffs' allegation that town had valid and enforceable liability insurance covering the full dollar amount of claims asserted against it was sufficient to withstand the defense of governmental immunity. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995).

Where city was a participant in a local government risk pool on the date of employee's death it thereby waived the right to assert governmental immunity in bar to plaintiff's claim. Lyles v. City of Charlotte, 120 N.C. App. 96, 461 S.E.2d 347 (1995).

When police officer's horse stepped on plaintiff's foot, and the officer was assigned to patrol fair in her capacity as a member of the Special Operations Division, Mounted Patrol Unit, and was responding to a fellow officer's radio call for assistance, the city and officer, in her official capacity, were immune from suit under the doctrine of governmental immunity for damages of $250,000 or less; however, to the extent plaintiff's claim exceeded $250,000, the city and officer were not entitled to the defense of governmental immunity. Jones v. Kearns, 120 N.C. App. 301, 462 S.E.2d 245 (1995).

Applied in Barnett v. Karpinos, 119 N.C. App. 719, 460 S.E.2d 208 (1995).

Quoted in Lyles v. City of Charlotte, 344 N.C. 676, 477 S.E.2d 150 (1996).

Cited in Mullins v. Friend, 116 N.C. App. 676, 449 S.E.2d 227 (1994); Wilhelm v. City of Fayetteville, 121 N.C. App. 87, 464 S.E.2d 299 (1995); White v. Town of Chapel Hill, 899 F. Supp. 1428 (M.D.N.C. 1995); Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996); Tise v. Yates Constr. Co., 345 N.C. 456, 480 S.E.2d 677 (1997).

ARTICLE 22.

Urban Redevelopment Law.

§ 160A-516. Issuance of bonds.

(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the commission (and the bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable on the bonds, nor in any event shall the bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. The bonds are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission under this Article and this authorization and issuance shall not be subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at either public or private sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the public sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least 10 days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the City of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission at private sale upon such terms and conditions as are mutually agreed upon between the commission and the purchaser. No bonds issued pursuant to this Article shall be sold at less than par and accrued interest. The provisions of the Local Government Finance Act shall not be applicable with respect to bonds sold or issued under this Article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Article.

(g) Bonds (including, without limitation, interim and long-term notes) may be issued or sold under this Article at private sale upon such terms and conditions as may be negotiated and mutually agreed upon by the commission and the purchaser (who may be the government or other public or private lender or purchaser). (1951, c. 1095, s. 13; 1961, c. 837, s. 10; 1971, c. 87, s. 3; 1973, c. 426, s. 75; 1981, c. 907, ss. 3, 4; 1995, c. 46, s. 20.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in subsection (b), in the fourth sentence deleted "and together with interest thereon and income therefrom, shall be exempt from all taxes" from the end; added the fifth and sixth sentences; and made stylistic changes throughout the subsection.

ARTICLE 26.

Regional Public Transportation Authority.

§ 160A-623. Regional Transportation Authority registration tax.

In accordance with Article 51 of Chapter 105 of the General Statutes, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602. A tax levied under this section before the enactment of Article 51 of Chapter 105 of the General Statutes is considered a tax levied under Article 51 of Chapter 105 of the General Statutes. (1991, c. 666, s. 2; 1993, c. 382, s. 1; c. 485, s. 28; 1993 (Reg. Sess., 1994), c. 761, s. 34; 1997-417, s. 5.)

Effect of Amendments. — The 1997 amendment, effective August 21, 1997, rewrote this section.

ARTICLE 27.

Regional Transportation Authority.

§ 160A-630. Title.

This Article shall be known and may be cited as the "Regional Transportation Authority Act." (1997-393, s. 1.)

Editor's Note. — Session Laws 1997-393, s. 4, made this Article effective August 14, 1997.

Session Laws 1997-393, s. 3.1, as amended by Session Laws 1997-443, s. 32.27(b), and by Session Laws 1997-456, s. 56.5, provides that the Major Investment Study authorized in Senate Bill 352 as enacted, which provides that funds appropriated to the Department of Transportation to fund a study for a passenger rail proposal for service between Asheville and Raleigh, and a proposal for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities, shall be administered by the Regional Transportation Authority which includes Guilford and Forsyth Counties, in consultation with the Department of Transportation, the Forsyth County Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High Point MPO.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 160A-631. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a Regional Transportation Authority as defined by subdivision (6) of this section.

(2) "Board of Trustees" means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) "Population" means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including, but not limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. "Public transportation system" however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) "Regional Transportation Authority," means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) "Unit of local government" means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) "Unit of local government's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-393, s. 1.)

§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

(1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;

(2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and

(3) The other three counties each have a population of 100,000 or over. (1997-393, s. 1.)

§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No city shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the four organizing cities.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided, the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended. (1997-393, s. 1.)

§ 160A-634. Territorial jurisdiction and service area of the Authority.

(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the United States Department of Transportation, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. (1997-393, s. 1.)

§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board

of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1997-393, s. 1.)

§ 160A-636. Voting.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-635(a)(2), each member shall have one vote. (1997-393, s. 1.)

§ 160A-637. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees. (1997-393, s. 1.)

§ 160A-638. Purpose of the Authority.

The purpose of the authority is to enhance the quality of life in its territorial jurisdiction by promoting the development of sound transportation systems which provide transportation choices, enhance mobility, accessibility, and safety, encourage economic development and sound growth patterns, and protect the man-made and natural environments of the region. (1997-393, s. 1.)

§ 160A-639. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;
(2) To have a seal;
(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;
(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;
(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents,

and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares, or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers

enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of buses, taxicabs, and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities, and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To facilitate the coordination of transportation plans in the service area and the activities of the member Metropolitan Planning Organizations;

(24) To maintain databases for the projection of future travel demands in the region;

(25) To provide and operate regional ridesharing and vanpool operations;

(26) To provide and operate regional transportation services for the elderly and handicapped;

(27) To provide other transportation related services, including air quality monitoring and analysis, as determined by the Board of Trustees;

(28) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(29) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties. (1997-393, s. 1.)

§ 160A-640. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction. (1997-393, s. 1.)

§ 160A-641. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-393, s. 1.)

§ 160A-642. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for transportation, or any funds whose use is not restricted by law. (1997-393, s. 1.)

§ 160A-643. Competition.

No equipment of the Authority may be used for charter, tour, or sight-seeing service. (1997-393, s. 1.)

§ 160A-644. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government. (1997-393, s. 1.)

§ 160A-645. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (1997-393, s. 1.)

§ 160A-646. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1997-393, s. 1.)

§ 160A-647. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. (1997-393, s. 1.)

§ 160A-648. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid. (1997-393, s. 1.)

§ 160A-649. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (1997-393, s. 1.)

§ 160A-650. Tax exemption.

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. (1997-393, s. 1.)

§ 160A-651. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate, or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-649 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-649, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1997-393, s. 1.)

ARTICLE 28.

Regional Natural Gas District.

§ 160A-660. Title.

This Article is the "Regional Natural Gas District Act" and may be cited by that name. (1997-426, s. 2.)

Editor's Note. — Session Laws 1997-426, s. 11, made this Article effective August 22, 1997.

Session Laws 1997-426, s. 10(a)-(c), provide that, insofar as the provisions of that act are not consistent with the provisions of any other law, public or private, the provisions of that act shall be controlling; that references in that act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly; and that that act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

Session Laws 1997-426, s. 10(d), is a severability clause.

§ 160A-661. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

(1) Board of Trustees. — The governing board of the district in which the general legislative powers of the district are vested.

(2) District. — A regional natural gas district.

(3) Natural gas system. — A gas production, storage, transmission and distribution system, or any part or parts thereof.

(4) Regional natural gas district. — A public body and body politic and corporate of the State of North Carolina organized in accordance with the provisions of this Article exercising public and essential governmental functions to provide for the preservation and promotion of the public welfare for the purposes, with the powers, and subject to the restrictions set forth in this Article.

(5) Unit of local government. — Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.

(6) Unit of local government's chief administrative official. — The county manager, city manager, town manager, or other person, by whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-426, s. 2.)

§ 160A-662. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been approved by the Utilities Commission at the time of creation of the district. A letter from the Utilities Commission to this effect shall conclusively establish that the area is totally unserved and that a project has not been approved. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction. (1997-426, s. 2.)

§ 160A-663. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-662, and the governing body of any city geographically located within one or more of these counties and that chooses to join in the organization of a district, may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county or city shall be required to make any other publication of the resolution under the provisions of any other law.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

(1) The name of the district.

(2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.

(3) A statement that the district is organized under this Article.

(4) The names of the organizing counties and cities.

(5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses of the officers, the name and address of the registered agent, and the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes. (1997-426, s. 2.)

§ 160A-664. Membership; officers; compensation.

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-662.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-Chair and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the district. (1997-426, s. 2.)

§ 160A-665. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. (1997-426, s. 2.)

§ 160A-666. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees. (1997-426, s. 2.)

§ 160A-667. General powers of the district.

The general powers of the district include all of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules not inconsistent with this Article, for its organization and internal management.

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(10) To develop and make data, plans, information, surveys, and studies of natural gas systems within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.

(11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.

(12) To develop and carry out demonstration projects.

(13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.

(14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.

(15) To own, lease, and operate natural gas systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems and transport and sell at wholesale all or any part of its gas supply.

(16) To purchase or finance real or personal property under G.S. 160A-20.

(17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

(18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district. A district may provide service or contract for the providing of service to a city geographically located within a district, notwithstanding that the city did not join the district pursuant to G.S. 160A-663(a) or G.S. 160A-672.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-676.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue revenue bonds and notes and to incur other obligations as authorized by this Article. (1997-426, s. 2.)

§ 160A-668. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-426, s. 2.)

§ 160A-669. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United

States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas. (1997-426, s. 2.)

§ 160A-670. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government. (1997-426, s. 2.)

§ 160A-671. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State. (1997-426, s. 2.)

§ 160A-672. Joinder of county or city.

(a) Whenever a district has been organized under the provisions of this Article, a county as defined in G.S. 160A-662(a) or a city within that county, or a city that did not join in the organization of a district but is geographically located within the district may, with the consent of the district as evidenced by a resolution adopted by a majority of the members of the Board of Trustees of the district, join the district.

(b) A county or city desiring to join an existing district shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 160A-663. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing.

(c) A certified copy of each resolution signifying the desire of a county or city to join an existing district, together with proof of publication of the notice of hearing on the resolution, and a certified copy of the resolution of the Board of Trustees of the district consenting to the joining shall be filed with the Secretary of State. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, the Secretary of State shall file such resolutions and proofs of publication in the office of the Secretary of State, shall issue a certificate of joinder, and shall record the certificate in the appropriate book of record. The issuance of the certificate shall be conclusive evidence of the joinder of the county or city to the district. (1997-426, s. 2.)

§ 160A-673. Bonds and notes authorized.

The district may issue revenue bonds and revenue bond anticipation notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the purposes provided in this Article. If and to the extent any provisions of Articles 5 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the provisions of this Article shall be controlling. A district may proceed with the issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding that, to the extent of any inconsistency only, the district complies with the provisions of this Article and not the provisions of Articles 5 and 9 of Chapter 159. (1997-426, s. 2.)

§ 160A-674. Acquisition, power of eminent domain.

(a) The district shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking. (1997-426, s. 2.)

§ 160A-675. Tax exemption.

A district, and its property, bonds and notes, and income, are exempt from property taxes and income taxes to the same extent as if it were a city. A district is subject to gross receipts tax under G.S. 105-116. (1997-426, s. 2.)

§ 160A-676. Authority to fix and enforce rates.

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter. (1997-426, s. 2.)

Chapter 160B.

Consolidated City-County Act.

Article 2.

Defining Urban Service Districts.

Sec.

160B-3. Authority; purpose; administration.
160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation.

Article 5.

Assumption of Obligations and Debt Secured By a Pledge of Faith and Credit.

Part 2. Assumption of Obligations and Debt.

Sec.

160B-20. Local Government Commission review of assumption of debt secured by a pledge of faith and credit; assumption of debt secured by a pledge of faith and credit and right to issue authorized but unissued debt secured by a pledge of faith and credit upon consolidation.
160B-21. Notice of enactment of consolidation; limitation of actions.

Article 2.

Defining Urban Service Districts.

§ 160B-3. Authority; purpose; administration.

(a) The governing board may define any number of urban service districts in order to finance, provide or maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire consolidated city-county.

(b) The powers, duties, functions, rights, privileges, and immunities of an urban service district shall be exercised or administered by the governing board of the consolidated city-county. Any revenues, distributions, or other funds due an urban service district shall be paid to the governing board of the consolidated city-county. (1973, c. 537, s. 1; 1995 (Reg. Sess., 1996), c. 646, ss. 22(a), 22(b).)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, redesignated the text of former G.S. 160B-3 as present subsection (a); recodified former G.S. 160B-4(c) as present subsection (b); substituted "purpose; adminstration" for "purpose of district" in the catchline; and made punctuation changes.

§ 160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation.

(a) The governing board, by resolution, may define an urban service district within the boundaries of the largest municipality that existed in the county before consolidation and within the boundaries of any other municipality abolished at the time of the establishment of the consolidated city-county. Notwithstanding the provisions of G.S. 160B-7, the resolution may also define an urban service district to include areas proposed for inclusion in an urban service district and identified in a plan for consolidation prepared by a consolidation study commission pursuant to Article 20 of Chapter 153A of the General Statutes or a plan approved by the General Assembly. Any urban service district so defined shall comprise the total area of the abolished municipality as it existed immediately before the effective date of consolidation. As determined by the governing board, the resolution shall take effect as to the areas included therein either upon its adoption or at the beginning of a fiscal year commencing after its passage.

(b) Prior to the effective date of consolidation, an interim governing board of a consolidated city-county by resolution may define an urban service district. The resolution defining the urban service district shall take effect upon the effective date of the consolidation.

(c) Recodified as § 160B-3(b) by Session Laws 1995 (Reg. Sess., 1996), c. 646, s. 22(a). (1973, c. 537, s. 1; 1995, c. 461, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 22(a).)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, recodified subsection (c) of this section as § 160B-3(b).

ARTICLE 5.

Assumption of Obligations and Debt Secured By a Pledge of Faith and Credit.

Part 2. Assumption of Obligations and Debt.

§ 160B-20. Local Government Commission review of assumption of debt secured by a pledge of faith and credit; assumption of debt secured by a pledge of faith and credit and right to issue authorized but unissued debt secured by a pledge of faith and credit upon consolidation.

(a) Review by Local Government Commission. — At the date specified in the following sentence if any consolidating city or county has outstanding any debt secured by a pledge of faith and credit or, if applicable, any authorized but unissued debt secured by a pledge of faith and credit which is proposed to be assumed by the consolidated city-county or has outstanding or pending approval any debt secured by a pledge of faith and credit the issuance of which was or is subject to approval by the Local Government Commission, then the assumption of any such debt and, if applicable, the assumption of the right to issue such authorized but unissued debt, if any, shall be subject to review by the Local Government Commission. The finance officers of the units proposed to be consolidated shall use their best efforts to notify the secretary of the Local Government Commission of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit at least two months before the introduction in the General Assembly of legislation proposing to enact the consolidation into law, provided that time allows. The Local Government Commission, to such extent it deems appropriate, may conduct a review of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit and may report the results of its review to the presiding officer of each house of the General Assembly to be provided to the respective committees to which the legislation to enact the consolidation shall be referred.

(b) Assumption of Debt Secured by a Pledge of Faith and Credit by Consolidated City-County. — Subject to the requirement of referendum approval of certain debt assumption for consolidation provided in G.S. 160B-18(a), upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(b), the debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation (including formerly authorized but unissued debt secured by a pledge of faith and credit as may have been issued at the time) is assumed by, and becomes a binding obligation of the consolidated city-county, and the faith and credit of the consolidated city-county is pledged to secure any such assumed debt secured by a pledge of faith and credit. In addition, any debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall become a binding obligation of the consolidated city-county and the faith and credit of the consolidated city-county is pledged to secure any such debt.

(c) Right to Issue Authorized but Unissued Debt Secured by a Pledge of Faith and Credit. — Subject to the passage of a referendum relating to the assumption by the consolidated city-county of the right to issue any authorized but unissued debt of the consolidating city to be secured by a pledge of faith and credit that is proposed to be assumed by the consolidated city-county, upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation as provided in G.S. 160B-18(b), the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation is assumed by, and upon issuance such obligations become binding obligations of, the consolidated city-county, and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt secured by a pledge of faith and credit. In addition, the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall be vested in the consolidated city-county and, upon issuance, such debt secured by a pledge of faith and credit becomes a binding obligation of the consolidated city-county and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt. (1995, c. 461, s. 4; 1995 (Reg. Sess., 1996), c. 742, s. 40.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "by the General Assembly and effective upon the effective date of the consolidation" following "assumption for consolidation" in the first sentence of subsection (b).

§ 160B-21. Notice of enactment of consolidation; limitation of actions.

(a) Publication of Notice of Enactment. — Following ratification of an act of the General Assembly authorizing consolidation, there shall be published once in a newspaper of general circulation in the county a notice of said enactment and, if applicable, the fact that in connection with said enactment there is an assumption by the consolidated city-county of the debt secured by a pledge of faith and credit of the consolidating city and, if applicable, assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city and that there is also binding on the consolidated city-county the debt secured by a pledge of faith and credit of the county and, if applicable, there is vested in the consolidated city-county the right to issue authorized but unissued debt secured by a pledge of faith and credit of the county with the following statement appended:

> "Any action or proceeding challenging the regularity or validity of this enactment must be begun within 30 days after the date of publication of this notice."

The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other persons as shall be designated by each applicable governing body or board.

(b) Limitation on Action Contesting Validity of Enactment of Consolidation. — Any action or proceeding in any court to set aside enactment of a city-county consolidation by the General Assembly, or to obtain any other relief, upon the grounds that the enactment is invalid or was irregularly enacted, must be begun within 30 days after the publication of the notice of the enactment. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the enactment or any irregularity in the enactment shall be asserted, nor shall the validity of the enactment be open to question in any court upon any grounds whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1995, c. 461, s. 4; 1995 (Reg. Sess., 1996), c. 742, s. 41.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the statement in subsection (a), substituted "enactment" for "referendum", and substituted "notice" for "statement of result".

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Sec.
161-10. Uniform fees of registers of deeds.
161-11.1. Fees for Children's Trust Fund.

Article 2.

The Duties.

161-22. Index of registered instruments.
161-22.2. Parcel identifier number indexes.

Sec.
161-27. Register of deeds failing to discharge duties; penalty.

Article 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

161-50.3. Disbursements.
161-50.4. Eligibility.

ARTICLE 1.

The Office.

§ 161-5. Vacancy in office.

Local Modification. — Beaufort: 1997-248, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 161-10. Uniform fees of registers of deeds.

(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. — For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copy-

ing and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1; 1997-309, s. 9.)

Editor's Note. — Session Laws 1993, c. 425, s. 1, which amended this section, became effective October 1, 1993, and applied to fees collected and entries made on or after that date.

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, substituted "twenty-one dollars ($21.00) per sheet or page" for "nineteen dollars ($19.00)" in subdivision (a)(3).

§ 161-11.1. Fees for Children's Trust Fund.

(a) Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) Repealed by Session Laws 1997-136, s. 1, effective June 4, 1997. (1983, c. 894, s. 4; 1989 (Reg. Sess., 1990), c. 1039, s. 8; 1997-136, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, deleted subsection (b) relating to the register of deeds, distributing a pamphlet with each marriage license, promoting the prevention of alcohol and drug abuse by the mother with potential harm to the fetus.

ARTICLE 2.

The Duties.

§ 161-22. Index of registered instruments.

(a) The register of deeds shall provide and keep in her or his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and such indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds shall not be required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

(b) In offices using the "Family" index system, the index entry shall show the name of each party under the appropriate family name and the initials of the party under the appropriate alphabetical arrangement of the index. In offices using indexing systems having subdivisions of the letters of the alphabet, a registered instrument shall be deemed properly registered only when it has been indexed under the correct subdivision of the appropriate letter of the alphabet.

(c) Instruments affecting real property shall be indexed in the appropriate real property indexes, and instruments affecting personal property shall be indexed in the appropriate personal property indexes. Instruments affecting both real and personal property shall be indexed in both the real and personal property indexes.

(d) Deeds of trust may be indexed in the names of the grantor and trustee only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that such documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall be in conformity with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the register of deeds' office and shall also be placed near the index books or in user manuals in offices using automated indexing systems. From and after the effective date of such rules, a registered instrument shall be deemed properly registered only when it has been indexed according to the rules.

(h) No instrument shall be deemed registered until it has been indexed as provided in this section.

(i) A violation of this section shall constitute a Class 1 misdemeanor. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C.S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c. 1136, ss. 1, 2; 1983, c. 127; c. 699, ss. 1, 3; 1989, c. 523, s. 2; 1993, c. 178, ss. 1, 2, 4, 5; c. 539, s. 1096; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 178, which amended this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

Session Laws 1993, c. 539, s. 1096, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 161-22.2. Parcel identifier number indexes.

(a) In lieu of the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1, the register of deeds of any county in which unique parcel identifier numbers have been assigned to all parcels of real property may install an index by land parcel identifier numbers. For each instrument filed of record, the entry in a land parcel identifier number index must contain the following information:

(1) The parcel identifier number of the parcel or parcels affected;

(2) A brief description of the parcel or parcels, including subdivision block and lot number, if any;

(3) A description of the type of instrument recorded and the date the instrument was filed;

(4) The names of the parties to the instrument to the same extent as required by G.S. 161-22 and the legal status of the parties indexed;

(5) The book and page number, or film reel and frame number, or other file number where the instrument is recorded.

(b) Every instrument affecting real property filed for recording in the office of such register of deeds shall be indexed under the parcel identifier number of the land parcel or parcels affected.

(c) The parcel identifier number index may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the parcel identifier number index is maintained in a computer or other automated data-processing machine, the register of deeds shall, at least once each month, obtain from the computer or other data-processing machine a printed copy on paper or film of all index entries made since the previous printed copy was obtained. The printed copies shall be retained as security copies and shall not be altered or destroyed.

(d) Before a register of deeds may install a parcel identifier number index in lieu of the alphabetical indexes required by G.S. 161-22, the proposed index must be approved by the Secretary of Environment and Natural Resources. Before approving a parcel identifier number index, the Secretary must find that:

(1) The requirements of this section, G.S. 161-22, and all other applicable indexing requirements of the North Carolina General Statutes and applicable judicial decisions will be met by the index;

(2) Measures for the protection of the indexed information are such that computer or other machine failure will not cause an irremediable loss of the information;

(3) Printed forms and index sheets used in the index permit a display of all information required by law and are otherwise adequate;

(4) Any computer or other data-processing machine used and the program for the use of such machines are adequate to perform the tasks assigned to them;

(5) Access to the information contained in the index can be obtained by the use of both a parcel identifier number and the name of any party to an instrument filed of record;

(6) Any parcel identifier number either reflects the State plane coordinates of some point in the parcel, or is keyed to a map of the parcel that shows the location of the parcel within the county;

(7) The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county;

(8) The parcel identifier numbering system shows for parcels of land created by subdivision, the number of the parcel of land subdivided in addition to the numbers of the newly-created parcels;

(9) The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;

(10) The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land;

(11) The parcel identifier numbering system will meet the needs of the users as well as or better than the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1.

The Secretary may require a register of deeds seeking approval of a parcel identifier number index to furnish him with any information concerning the index that is pertinent to the findings required for approval.

(e)(1) An approved parcel identifier number index shall become effective as the official real property index of the county as of the first day of July or the first day of January, as the board of commissioners directs, following approval by the Secretary of Environment and Natural Resources.

(2) In any county in which a parcel identifier index is the official index, the register of deeds shall post notices in the alphabetical index books and at other appropriate places in his office stating that the parcel identifier number index is the official index and the date when the change became effective. (1977, c. 589; 1979, c. 700, s. 2; 1983, c. 49; 1985, c. 757, s. 161(a), (b); 1989, c. 727, s. 218(163); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 161-22.3. Minimum standards for land records management.

Local Modification. — Brunswick: 1995 (Reg. Sess., 1996), c. 629, s. 2 (effective January 1, 1999).

Editor's Note. — Session Laws 1993, c. 178, s. 3, effective June 17, 1993, amending Session Laws 1991, c. 697, s. 3, provides that this section becomes effective January 1, 1995.

Session Laws 1993, c. 178, which amended § 161-22 and changed the effective date of this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

§ 161-27. Register of deeds failing to discharge duties; penalty.

If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C.S., s. 3567; 1993, c. 539, s. 1097; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1097, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

§ 161-50.3. Disbursements.

(a) Immediately following July 1, 1988, the Department of State Treasurer shall divide an amount equal to forty-five percent (45%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments to all eligible retired registers of deeds as of July 1, 1988, payable in accordance with the method described in G.S. 161-50.5, except that such pension benefit shall be computed for a six-months basis beginning with the month of July, 1988.

(b) Immediately following January 1, 1996, and the first of January of each succeeding calendar year thereafter, the Department of State Treasurer shall divide an amount equal to ninety-three percent (93%) of the assets of the Fund at the end of the preceding calendar year into equal shares and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) The remaining seven percent (7%) of the Fund's assets as of December 31, 1995, and at the end of each calendar year thereafter, may be used by the Department of State Treasurer in administering the provisions of this Article.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced. (1987, c. 792, s. 1; 1995, c. 259, s. 2.)

§ 161-50.4. Eligibility.

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(b) Each eligible retired register of deeds as defined in subsection (a) or (a1) of this section relating to service and retirement status on January 1 of each calendar year shall be entitled to receive a monthly pension under this Article beginning with the month of January of the same calendar year. (1987, c. 792, s. 1; 1991, c. 443, s. 1; 1995, c. 259, s. 1.)

Chapter 162.

Sheriff.

Article 3.

Duties of Sheriff.

Sec.
162-13. To receipt for process.

Article 4.

County Prisoners.

Sec.
162-56. Place of confinement.

ARTICLE 1.

The Office.

§ 162-1. Election and term of office.

CASE NOTES

Sheriffs Not Entitled to Eleventh Amendment Immunity. — The Eleventh Amendment of the U.S. Constitution does not bar a suit against a sheriff in his official capacity, because state law treats sheriffs as local officials. Harter v. Vernon, 101 F.3d 334 (4th Cir. 1996).

Cited in Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

§ 162-2. Disqualifications for the office.

CASE NOTES

Cited in Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996).

§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.

Local Modification. — Beaufort: 1997-248, s. 2.

ARTICLE 3.

Duties of Sheriff.

§ 162-13. To receipt for process.

Every sheriff or coroner shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R.C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C.S., s. 3935; 1995, c. 379, s. 14(d).)

CASE NOTES

Cited in Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

§ 162-24. Delegation of official duties.

CASE NOTES

Quoted in Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996).

ARTICLE 4.

County Prisoners.

§ 162-55. Injury to prisoner by jailer.

CASE NOTES

Criminal Negligence Required for Treble Damages. — A jailer's negligent failure to protect a prisoner from assaults by other inmates was not criminal conduct, absent any intent by jailer that the prisoner be harmed, and because only those acts amounting to crimes yield treble civil damages, prisoner would not be entitled to treble damages for such an assault. Letchworth v. Gay, 874 F. Supp. 107 (E.D.N.C. 1995).

§ 162-56. Place of confinement.

Persons committed to the custody of a sheriff shall be confined in the facilities designated by law for such confinement, and shall not be confined in any other place. Nothing herein shall be construed to prohibit or limit the authority of a sheriff to house prisoners committed to his custody in quarters, approved by the Department of Health and Human Services, other than the county jail. (1795, c. 433, s. 4; R.C., c. 87, s. 16; Code, s. 3471; Rev., s. 3660; C.S., s. 4408; 1983, c. 631, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 162-58. Counties may work prisoners.

Local Modification. — Alamance, Caswell & Rockingham (expires June 30, 1999): 1997-303.

Chapter 162A.

Editor's Note. — The legislation and annotations affecting Chapter 162A have been included in a recently published replacement chapter.

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

Sec.
163-1. Time of regular elections and primaries.

Article 2.

Time of Elections to Fill Vacancies.

163-9. Filling vacancies in State and district judicial offices.

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

163-22.1. Power of State Board to order new elections.

Article 4.

County Boards of Elections.

163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.
163-33. Powers and duties of county boards of elections.

Article 5.

Precinct Election Officials.

163-41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.
163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.
163-43. Ballot counters; appointment; qualifications; oath of office.
163-45. Observers; appointment.

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 7A.

Registration of Voters.

163-82.6. Acceptance of application forms.

Sec.
163-82.10. Official record of voter registration.
163-82.14. List maintenance.
163-82.20. Voter registration at other public agencies.

Article 8.

Challenges.

163-87. Challenges allowed on day of primary or election.

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

163-96. "Political party" defined; creation of new party.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

Article 10.

Primary Elections.

163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.
163-107. Filing fees required of candidates in primary; refunds.
163-107.1. Petition in lieu of payment of filing fee.
163-111. Determination of primary results; second primaries.
163-114. (See editor's note for effective date) Filling vacancies among party nominees occurring after nomination and before election.
163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.

Article 11.

Nomination by Petition.

163-122. Unaffiliated candidates nominated by petition.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 13.

General Instructions.

163-135. Applicability of Article.
163-137. General, special and primary

Sec.

election ballots; names and questions to be printed thereon; distribution.

163-138. (See editor's note for effective date) Instructions for printing names on primary and election ballots.

163-140. Kinds of ballots; what they shall contain; arrangement.

163-152.1. Assistance to blind voters in primaries and elections.

163-156. Rules when vacancies for superior court judge are to be voted on.

Article 14.

Voting Systems.

163-166. [Repealed.]

Article 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

163-175. County board of elections to canvass returns.

Article 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

163-191. (See editor's note for effective date) Contested primaries and elections; how tie broken.

163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.

Article 17.

Members of United States House of Representatives.

163-201. Congressional districts specified.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

163-226. Who may vote an absentee ballot.

163-227. State Board to prescribe form of application for absentee ballots; county to secure.

163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

163-229. Absentee ballots, container-return envelopes, and instruction sheets.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

163-278.6. Definitions.

163-278.7A. Gifts from federal political committees.

163-278.9. Statements filed with Board.

163-278.9A. Statements filed by referendum committees.

163-278.10A. Threshold of $3,000 for Financial Reports.

163-278.11. Contents of treasurer's statement of receipts and expenditures.

163-278.12A. Disclosure of spending for material that names candidates.

163-278.13. Limitation on contributions.

163-278.13A. [Repealed.]

163-278.13B. Limitation on fund-raising during legislative session.

163-278.16. Regulations regarding contributions, expenditures and media advertising.

163-278.16A. Restriction on use of State funds by declared candidate for Council of State for advertising or public service announcements using their names, pictures, or voices.

163-278.22. Duties of State Board.

163-278.34. Filings; penalty for late filings.

Part 2. Municipal Campaign Reporting.

163-278.40. Definitions.

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

Article 24.

Conduct of Municipal Elections.

163-291. Partisan primaries and elections.

Sec.
163-293. Determination of election results in cities using the election and runoff election method.
163-294. Determination of election results in cities using nonpartisan primaries.
163-307 through 163-320. [Reserved.]

SUBCHAPTER X. ELECTION OF SUPERIOR COURT JUDGES.

Article 25.

Nomination and Election of Superior Court Judges.

163-321. (See editor's note for effective date) Applicability.
163-322. (See editor's note for effective date) Nonpartisan primary election method.
163-323. (See editor's note for effective date) Notice of candidacy.
163-324. (See editor's note for effective date) Filing fees required of candidates; refunds.
163-325. (See editor's note for effective date) Petition in lieu of payment of filing fee.
Sec.
163-326. (See editor's note for effective date) Certification of notices of candidacy.
163-327. (See editor's note for effective date) Death of candidates or elected officers.
163-328. (See editor's note for effective date) Failure of candidates to file; death of a candidate before election.
163-329. (See editor's note for effective date) Elections to fill vacancy created after primary filing period to use plurality method.
163-330. (See editor's note for effective date) Voting in primary.
163-331. (See editor's note for effective date) Date of primary.
163-332. (See editor's note for effective date) Ballots.
163-333. (See editor's note for effective date) Canvass.
163-334. (See editor's note for effective date) Counting of ballots.
163-335. (See editor's note for effective date) Other rules.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January after next election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
District Attorney	District Attorney district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C.S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 1; 1993 (Reg. Sess., 1994), c. 738, s. 2; 1996, 2nd Ex. Sess., c. 9, s. 2.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 1996, Second Extra Session, c. 9, s. 24, made this amendment effective upon ratification, and applicable beginning with the 1996 elections, except that Sections 1 and 2 of that act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections. The Act was ratified August 2, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment substituted "Superior Court District" for "State" in the column entitled "Jurisdiction" under the entry for "Judges of the superior courts." For effective date, see editor's note.

CASE NOTES

Cited in Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-9. Filling vacancies in State and district judicial offices.

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:
(1) With only one resident judge; or
(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,
shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy

occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142. (1901, c. 89, ss. 4, 73; Rev. s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81; 1979, c. 494; 1981, c. 763, s. 3; 1985 (Reg. Sess., 1986), c. 920, s. 6; 1995, c. 98, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 21.)

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 2, 1996, and applicable to vacancies to be filled by elections conducted on or after that date, added the subsection (a), (b), (c), and (d) designations; and in subsection (b) added "Except for judges specified in the next paragraph of this subsection" at the beginning, and added the second paragraph.

§ 163-12. Filling vacancy in United States Senate.

Legal Periodicals. — For article, "Rediscovering the Sovereignty of the People: the Case for Senate Districts," see 75 N.C.L. Rev. 1 (1996).

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.

Editor's Note. — Session Laws 1997-515, s. 6, provides: "The State Board of Elections shall provide full access to the public of campaign finance reports over the Internet as soon as technically feasible."

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 163-22.1. Power of State Board to order new elections.

(a) State Board's Authority. — If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction.

The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county or municipal board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county or municipal board of elections.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section.

(b) Special Circumstances in Which New Election Shall Be Called. — Notwithstanding the provisions of subsection (a) of this section, if

(1) The number of ineligible voters who voted in the election was sufficient to change the result of the election; and

(2) The way those votes were cast cannot be determined by examining the ballots,

then the person protesting the election shall have the right to a new election.

(c) Special Circumstances in Which Tie Shall Be Declared. — Notwithstanding the provisions of subsection (a) of this section, if the circumstances described in subsection (b) of this section obtain except that the number of ineligible voters was sufficient to change the result to a tie but not result in a different winner, then the person protesting the election shall have the right to have a tie declared by the State Board. If a tie is declared, the provisions of law governing tied elections shall apply. (1973, c. 793, s. 5; 1983, c. 210; 1995 (Reg. Sess., 1996), c. 694, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, and applicable to all votes cast on or after that date, added the subsection (a) designation; added the subcatchline to subsection (a); and added subsections (b) and (c).

§ 163-28. State Board of Elections independent agency.

CASE NOTES

Cited in In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995).

ARTICLE 4.

County Boards of Elections.

§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June 1985, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

> "I, ……., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the ………. County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars ($25.00) per day for attending each of those meetings. (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C.S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1; 1973, c. 793, s. 7; c. 1094; c. 1344, s. 4; 1975, c. 19, s. 66; c. 159, s. 1; 1981, c. 954, s. 1; 1983, c. 617, ss. 1, 2; 1985, c. 472, s. 4; 1997-211, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 19, 1997, and applicable to appointments to county boards of elections for terms commencing on or after June 24, 1997, in the fifth paragraph inserted "son-in-law", "daughter-in-law", "mother-in-law", "father-in-law", "sister-in-law", and substituted "brother, brother-in-law, aunt, uncle, niece, or nephew" for "or brother" in the first sentence, and added the second and third sentences.

§ 163-33. Powers and duties of county boards of elections.

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(2) To appoint all chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any chief judge, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.

(3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and

to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised. Provided that in any hearing on an irregularity no board of elections shall consider as evidence the testimony of a voter who cast a ballot, which ballot that voter was not eligible to cast, as to how that voter voted on that ballot.

(4) As provided in G.S. 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

(5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.

(6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, pollbooks, and other required papers and materials to the voting places.

(7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and pollbooks, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.

(8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. If the election is on a State bond issue, an amendment to the Constitution, or approval of an act submitted to the voters of the State, the State Board of Elections shall reimburse the county boards of elections for their reasonable additional costs in placing such notices, advertisements, and publications. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20-day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.

(9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.

(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. 163-72.3.

(11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

(12) To perform such other duties as may be prescribed by this Chapter or the rules of the State Board of Elections.

(13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility. (1901, c. 89, s. 11; Rev., s. 4306; C.S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1973, c. 793, ss. 9-11; 1983, c. 392, s. 1; 1989, c. 93, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 15; 1995 (Reg. Sess., 1996), c. 694, s. 1; 1997-510, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, and applicable to all votes cast on or after that date, added the last sentence in subdivision (3).

The 1997 amendment, effective September 17, 1997, inserted the second sentence of subdivision (8).

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.

(a) Appointment of Chief Judge and Judges. — At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified, except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the county in which the precinct is located, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the chief judge.

The term "precinct official" shall mean chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If the recommendations of the party chairs for chief judge or judge in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as chief judge or judge in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of officials for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct, provided that where possible the county board shall seek and adopt the recommendation of the county chairman of the political party affected. In making its appointments, the county board shall assure, wherever possible, that no precinct has a chief judge and judges all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the three positions of chief judge and judge in a precinct.

If, at any time other than on the day of a primary or election, a chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. 163-82.24, each chief judge and judge of election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as chief judge of (judge of election in) ..... precinct, ... County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words "chief judge of" the words "assistant in" or "judge of election in" whichever is appropriate.

(b) Special Registration Commissioners Abolished; Optional Training. — The office of special registration commissioner is abolished. The State Board of Elections and county boards of elections may provide training to persons assisting in voter registration.

(b1) Repealed by Session Laws 1985, c. 387, s. 1.1.

(c) Publication of Names of Precinct Officials. — Immediately after appointing chief judges and judges as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C.S., ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 435; c. 1223, s. 2; 1975, c. 159, ss. 3, 4; c. 711; c. 807, s. 1; 1979, c. 766, s. 1; c. 782; 1981, c. 628, ss. 1, 2; c. 954, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1265, s. 7; 1983, c. 617, s. 5; 1985, c. 387; c. 563, ss. 9, 10; c. 600, s. 7.1; c. 759, ss. 7, 7.1, 8; 1987, c. 80; c. 491, s. 4.1; 1987 (Reg. Sess., 1988), c. 1028, s. 12; 1989, c. 93, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 3; 1995 (Reg. Sess., 1996), c. 734, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (a), in the first paragraph, inserted "except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge" at the end of the second sentence, substituted "county in which the precinct is located" for "precinct for which appointed" in the second to last sentence, and added the seventh paragraph.

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 95; c. 1359, ss. 1-3; 1975, c. 19, s. 67; 1977, c. 95, ss. 1, 2; 1981, c. 954, s. 3; 1983, c. 617, s. 4; 1985, c. 563, ss. 8, 8.1; 1993 (Reg. Sess., 1994), c. 762, s. 17; 1995 (Reg. Sess., 1996), c. 554, s. 1; c. 734, s. 2.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 554, s. 1, effective June 6, 1996, added the present second paragraph.

Session Laws 1995 (Reg. Sess., 1996), c. 734, s. 2, effective June 21, 1996, in the first paragraph, substituted "county in which the precinct is located" for "precinct for which appointed" in the third sentence, and substituted "the county" for "a precinct" in the last sentence, added the third, fourth, fifth, and sixth sentences to the third paragraph, and added the fourth paragraph.

§ 163-43. Ballot counters; appointment; qualifications; oath of office.

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in .... precinct, ... County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God."

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1981, c. 954, s. 5; 1985, c. 563, s. 10.1; 1993 (Reg. Sess., 1994), c. 762, s. 18; 1995 (Reg. Sess., 1996), c. 734, s. 3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "the county in which the precinct is located" for "that precinct" in the last sentence of the first paragraph.

§ 163-45. Observers; appointment.

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the chief judge for each affected precinct. He shall retain the other copy. The chairman, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94; 1977, c. 453; 1991, c. 727, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 19; 1995 (Reg. Sess., 1996), c. 688, s. 1; c. 734, s. 4.1.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 688, s. 1, effective July 1, 1996, and applicable to all primaries and elections occurring on or after that date, substituted "county" for "precinct" in the next-to-last sentence of the first paragraph.

Session Laws 1995 (Reg. Sess., 1996), c. 734, s. 4, effective June 21, 1996, in the first paragraph, substituted "the candidate or the candidate's" for "he or his" in the fourth sentence, and substituted "county" for "precinct" in the last sentence.

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 7A.

Registration of Voters.

§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. — The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person.

(b) Signature. — The form shall be valid only if signed by the applicant.

(c) Registration Deadlines for an Election. — In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

except as provided in subsection (d) of this section.

(d) Instances When Person May Register and Vote on Election Day. — If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election-day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss., 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s., 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 1997-456, s. 27.)

Editor's Note. — Subsection (d) of this section was renumbered as subsections (d) and (e) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 163-82.10. Official record of voter registration.

(a) Application Form Becomes Official Record. — A completed and signed registration application form described in G.S. 163- 82.3, once approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county and shall keep them in a place where they are secure.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age or date of birth or both, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — Free lists of all registered voters in the county shall be provided in the following cases:

(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
    a. The State chair of each political party; and
    b. The county chair of each political party

    once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 3½; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, rewrote subsection (b); and substituted "precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts" for "and precinct" in the third sentence of subsection (c).

§ 163-82.11. Establishment of statewide computerized voter registration.

Editor's Note. —

Session Laws 1997-443, s. 31, provides: "The State Board of Elections shall establish a statewide data elections management system, which shall prescribe data format standards, data communication standards, and data content standards, no later than November 1, 1997, and that counties shall adhere to the standards no later than August 31, 1998; and provides for appropriation of funds for use in developing the system. The State Board of Elections and the Information Resource Management Commission shall submit an implementation plan to the Joint Legislative Commission on Governmental Operations, and shall report quarterly on the status of the project. To the extent that this section conflicts with G.S. 163-82.11 through G.S. 163-82.13, with Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, or with Session Laws 1995, c. 507, s.13.2, this section prevails; except to the extent of the conflict, Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, remains in effect."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 163-82.12. Promulgation of rules relating to computerized voter registration.

Editor's Note. —

Session Laws 1997-443, s. 31, provides: "The State Board of Elections shall establish a statewide data elections management system, which shall prescribe data format standards, data communication standards, and data content standards, no later than November 1, 1997, and that counties shall adhere to the standards no later than August 31, 1998; and provides for appropriation of funds for use in developing the system. The State Board of Elections and the Information Resource Management Commission shall submit an implementation plan to the Joint Legislative Commission on Governmental Operations, and shall report quarterly on the status of the project. To the extent that this section conflicts with G.S. 163-82.11

through G.S. 163-82.13, with Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, or with Session Laws 1995, c. 507, s.13.2, this section prevails; except to the extent of the conflict, Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, remains in effect."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 163-82.13. Access to statewide voter registration file.

Editor's Note. —

Session Laws 1997-443, s. 31, provides: "The State Board of Elections shall establish a statewide data elections management system, which shall prescribe data format standards, data communication standards, and data content standards, no later than November 1, 1997, and that counties shall adhere to the standards no later than August 31, 1998; and provides for appropriation of funds for use in developing the system. The State Board of Elections and the Information Resource Management Commission shall submit an implementation plan to the Joint Legislative Commission on Governmental Operations, and shall report quarterly on the status of the project. To the extent that this section conflicts with G.S. 163-82.11 through G.S. 163-82.13, with Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, or with Session Laws 1995, c. 507, s.13.2, this section prevails; except to the extent of the conflict, Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16, remains in effect."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 163-82.14. List maintenance.

(a) Uniform Program. — The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

(1) To remove the names of ineligible voters from the official lists of eligible voters, and

(2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board.

(b) Death. — The Department of Health and Human Services, on or before the fifteenth day of March, June, September, and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding quarter. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony. —

(1) Report of Conviction Within the State. — The clerk of superior court, on or before the fifteenth day of March, June, September, and December of every year, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar quarter. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.

(2) Report of Federal Conviction. — The Executive Secretary-Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.

(3) County Board's Duty Upon Receiving Report of Conviction. — When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:

a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;

b. A notice of cancellation received under G.S. 163-82.9; or

c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does

not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:

a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;

b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and

c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision if the registrant remains on the list, the registrant has not voted in two successive presidential elections or in any election in between, and the county board has not confirmed the registrant's address by another means. The county board may send a confirmation mailing in accordance with this subdivision if the registrant has been identified as residing outside the county through change-of-address information supplied by the Postal Service through its licensees. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 25, 28; c. 1223, s. 4; 1975, c. 395; 1977, c. 265, s. 3; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1983, c. 411, ss. 1, 2; 1985, c. 211, ss. 1, 2; 1987, c. 691, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1997-443, s. 11A.117.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, twice substituted "Health and Human Services" for "Environment, Health, and Natural Rsources" in subsection (b).

§ 163-82.20. Voter registration at other public agencies.

(a) Voter Registration Agencies. — Every office in this State which accepts:

(1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

(2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or

(3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. — A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163-82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled. — If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions. — Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;

(2) Display any such political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register. — No information relating to a declination to register to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections. — Any voter registration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) Twenty-Five-Day Deadline for an Election. — Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) Ineligible Applications Prohibited. — No person shall make application to register to vote under this section if that person is ineligible to vote on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony. (1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 507, s. 25.10(c); 1995 (Reg. Sess., 1996), c. 608, s. 1.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 608, s. 1, effective July 1, 1996, deleted the expiration provisions of subdivision (a)(3) and former subsection (b1), redesignated as subsection (c).

ARTICLE 8.

Challenges.

§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c), or
(2) That the person has already voted in that primary or election, or
(3) That the person presenting himself to vote is not who he represents himself to be.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred. (1915, c. 101, s. 11; 1917, c. 218; C.S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1985, c. 563, ss. 11.4, 14; 1987, c. 408, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 26; 1995 (Reg. Sess., 1996), c. 734, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added the fourth paragraph.

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ………… COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ……… AND WHOSE STATE CHAIRMAN IS ………………, RESIDING AT …………… AND

WHO CAN BE REACHED BY TELEPHONE AT .... THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or

(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate
  a. Stating that the signatures on the petition have been checked against the registration records and
  b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall require a fee of five cents (5¢) for each signature appearing and shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented and the required fee received.

(c) Repealed by Session Laws 1983, c. 576, s. 3, effective July 1, 1983. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218;

C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27.)

Editor's Note. — Subsection (b) of this section was renumbered as subsections (b) and (b1) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

CASE NOTES

Ballot Access Rules Constitutional. — The ballot access rules in this section do not constitutionally burden rights guaranteed by the First and Fourteenth Amendments. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

Mandatory Ballot Petition Language Constitutional. — The State's mandatory ballot petition language in subsection (b) is not unconstitutional merely because it could conceivably mislead some individuals and could have been crafted more adroitly, because either the factfinder must be persuaded that protected expressive, political, and associational rights have in fact been invaded, or the court must be able to conclude as a matter of law that such is the inevitable consequence. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

Effect of Section on Third Political Parties. — By directing that a political party cannot run a candidate for election to any office in the state unless it garners the petition support of 2% of the electorate or the votes of 10%, this section and § 163-97 have combined so far to ensure that any small party must expend great effort to obtain statewide and local ballot access before each gubernatorial and presidential election only to lose that access in toto immediately thereafter. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

§ 163-97. Termination of status as political party.

CASE NOTES

Effect of Section on Third Political Parties. — By directing that a political party cannot run a candidate for election to any office in the state unless it garners the petition support of 2% of the electorate or the votes of 10%, section 163-96 and this section have combined so far to ensure that any small party must expend great effort to obtain statewide and local ballot access before each gubernatorial and presidential election only to lose that access in toto immediately thereafter. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

§ 163-97.1. Voters affiliated with expired political party.

CASE NOTES

State's Administrative Interests Outweigh Burden on Affected Parties. — The State's interests in administrative simplicity that are advanced by the forced voter disaffiliation provision of this section outweigh the small burden that provision imposes upon affected parties' associational interests. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. — No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

> "Date ....
>
> I hereby file notice as a candidate for nomination as .... in the .... party primary election to be held on ...., 19..... I affiliate with the .... party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the .... party.)
>
> I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.
>
> Signed ....
> Name of candidate
>
> Witness:
> ....
> ....
> (Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) **(See editor's note for effective date)** Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the superior courts
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(c) **(See editor's note for effective date)** Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January

§ 163-106(c) is set out twice. See notes.

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and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.

(e) Withdrawal of Notice of Candidacy. — Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The

Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective with respect to elections conducted until 1998. The second version of subsection (c) set out above is effective with respect to elections conducted in 1998 and thereafter.

Local Modification. — Pasquotank: 1995 (Reg. Sess., 1996), c. 612, s. 1.

For additional local modifications to this section, see the main volume.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, deleted "Judges of the superior courts" from the list in subsection (c). For effective date see Editor's note.

§ 163-107. Filing fees required of candidates in primary; refunds.

(a) **(See editor's note for effective date)** Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

§ 163-107(a) is set out twice. See notes.

(a) **(See editor's note for effective date)** Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that board shall cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county finance officer that the refund should be made, and the county finance officer shall make the refund in accordance with the provisions of the Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163-1, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e). (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C.S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84; 1973, c. 47, s. 2; c. 793, s. 37; 1977, c. 265, s. 6; 1983, c. 913, s. 56; 1995, c. 464, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 9.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective with respect to elections conducted until 1998. The second version of subsection (a) set out above is effective with respect to elections conducted in 1998 and thereafter.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, added "other than superior court judge" following "General Court of Justice" in the fourth entry under the column entitled "Office Sought" in subsection (a). For effective date, see Editor's notes.

§ 163-107.1. Petition in lieu of payment of filing fee.

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, any State executive officer, Justice of the Supreme Court or Judge of the Court of Appeals, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) **(See editor's note for effective date)** County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the District Court and judge of the Superior Court, or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(c) **(See editor's note for effective date)** County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200

§ 163-107.1(c) is set out twice. See notes.

registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and judge of the District Court or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. — Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot. (1975, c. 853; 1977, c. 386; 1985, c. 563, s. 13; 1996, 2nd Ex. Sess., c. 9, s. 12.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective with respect to elections conducted until 1998. The second version of subsection (c) set out above is effective with respect to elections conducted in 1998 and thereafter.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, deleted "and judge of the Superior Court" preceding "or members of the State House of Representatives" and made a related change in the fourth sentence of subsection (c). For effective date, see editor's note.

§ 163-111. Determination of primary results; second primaries.

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and

the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary. — If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary. —

(1) **(See editor's note for effective date)** A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections

§ 163-111(c)(1) is set out twice. See notes.

determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(1) **(See editor's note for effective date)** A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no

later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(d) Tie Votes; How Determined. —

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive

the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted. — In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C.S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85; 1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3; 1977, c. 265, s. 9; 1981, c. 645, ss. 1, 2; 1989, c. 549; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 10.)

Subdivision (c)(1) Set Out Twice. — The first version of subdivision (c)(1) set out above is effective with respect to elections conducted until 1998. The second version of subdivision (c)(1) set out above is effective with respect to elections conducted in 1998 and thereafter.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, added "other than superior court judge" following "General Court of Justice" in subdivision (c)(1). For effective date, see editor's note.

§ 163-114. (See editor's note for effective date) Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by appointment of
Any elective State office United States Senator	State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

§ 163-114 has a delayed effective date. See notes.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, s. 45; 1981 (Reg. Sess., 1982), c. 1265, ss. 4, 5; 1987, c. 509, s. 10; c. 526; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1037, s. 126.1; 1991, c. 727, s. 8; 1996, 2nd Ex. Sess., c. 9, s. 13.)

For this section as in effect with respect to elections conducted until 1998, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, from second set of instructions in the left column "Judge of superior court" following "Member of the United States House of Representatives"; deleted the fourth set of instructions which read on the left column "Judge of Superior Court in a single-county superior court district where the district is the whole county or part of the county", and read on the right column "County executive committee of political party in which vacancy occurs; provided, in the case of a superior court judge in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote"; and deleted the fifth set of instructions which read on the left column "Judge of Superior Court in a multi-county superior court district" and read on the right column "Appropriate district executive committee of political party in which vacancy occurs"; and deleted the former third paragraph, regarding a county partly in a multi-county superior court district. For the effective date, see editor's note.

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C.S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1; 1973, c. 793, s. 46; 1985, c. 563, ss. 7, 7.1; c. 759, s. 1; 1997-456, s. 27.)

Editor's Note. — The undesignated paragraphs of this section were renumbered as subsections (a) through (e) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

ARTICLE 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director

of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN .... COUNTY HEREBY PETITION ON BEHALF OF .... AS AN UNAFFILIATED CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) **(See editor's note for effective date)** This section does not apply to elections under Article 25 of this Chapter. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14.)

Local Modification. — Avery: 1997-99.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and

2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, added subsection (c). See editor's note for effective date.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.

Local Modification. — Avery: 1997-217; Mitchell County Board of Elections: 1997-183 s. 1.

For additional local modifications to this section, see the main pamphlet.

Article 12A.

Precinct Boundaries.

§ 163-132.3. Alterations to approved precinct boundaries.

Local Modification. — Avery: 1997-217; Mitchell County Board of Elections: 1997-183 s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 163-132.5C. Local acts and township lines.

Local Modification. — Avery: 1997-217; Mitchell County Board of Elections: 1997-183 s. 1.

For additional local modifications to this section, see the main pamphlet.

Article 13.

General Instructions.

§ 163-135. Applicability of Article.

(a) In General. — The provisions of this Article shall apply to all elections in all counties, cities, towns, townships, and school districts in the State of North Carolina.

(b) Primary Elections. — The provisions of this Article shall apply to all primary elections held in this State, or in any county, as fully as it applies to general elections.

(c) Special Elections. — Every election held in pursuance of a writ from the Governor shall be conducted in accordance with the provisions of this Article, so far as the particular case can be governed by general rules.

(d) Referenda. — This Article shall apply to and control all elections for the issuance of bonds and to all other elections in which any constitutional amendment, question, or issue is submitted to a vote of the people.

(e) Municipal Primaries and Elections. — This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of elections or a duly appointed municipal board of elections.

(f) **(See editor's note for effective date)** Judicial Elections. — Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the superior court. (1901, c. 89, s. 75; Rev., s. 4341; C.S., s. 5975; 1929, c. 164, ss. 2, 4, 34, 42; 1967, c. 775, s. 1; 1975, c. 798, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 15.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, added subsection (f). See editor's note for effective date.

§ 163-137. General, special and primary election ballots; names and questions to be printed thereon; distribution.

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-122.

(3) All questions, issues, and propositions to be voted on by the people.

(4) **(See editor's note for effective date)** The names of all candidates nominated under Article 25 of this Chapter.

(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 60 days prior to the date of any election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted.

(c) In a primary election the names of all candidates of the same political party for the same office shall be printed on the ballot either vertically or horizontally, and in no event shall both arrangements of names be used concurrently for candidates on the same ballot for the same office. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1; 1973, c. 536, s. 3; 1975, c. 149, s. 1; c. 844, s. 5; 1977, c. 408, s. 4; 1979, c. 797, s. 6; 1996, 2nd Ex. Sess., c. 9, s. 16.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, added subdivision (a)(4). For effective date, see editor's note.

§ 163-138. (See editor's note for effective date) Instructions for printing names on primary and election ballots.

In preparing primary, general, and special election ballots, the legal name of a candidate (together with his nickname in the situation outlined below) shall be printed precisely as it appears on the notice of candidacy form filed in accordance with G.S. 163-106, G.S. 163-323, or in petition forms filed in accordance with G.S. 163-122. If the candidate has inserted a nickname on the notice of candidacy or in the petition, it shall be printed on the ballot immediately before the candidate's surname and shall be enclosed by parentheses. Notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by G.S. 163-106(a), unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the alternate indicated by the candidate on his affidavit under G.S. 163-106(a) or G.S. 163-323(a). No title, appendage, or appellation indicating rank, status, or position, shall be printed before or following or as a nickname or in connection with the name of any candidate on any ballot. Nevertheless, a candidate who is a married woman may use the prefix "Mrs." and a candidate who is a single woman may use the prefix "Miss" before her name if she so elects. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1; 1985, c. 558, s. 2; 1993, c. 553, s. 61; 1996, 2nd Ex. Sess., c. 9, s. 17.)

For this section as in effect with respect to elections conducted until 1998, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, inserted "G.S. 163-323" following "G.S. 163-106" in the first sentence, and inserted "or G.S. 163-323(a)" following "G.S. 163-106(a)" in the fourth sentence. For effective date, see editor's note.

§ 163-140. Kinds of ballots; what they shall contain; arrangement.

(a) **(See editor's note for effective date)** Kinds of General Election Ballots; Right to Combine. — For purposes of general elections, there shall be seven kinds of official ballots entitled:

§ 163-140(a) has a delayed effective date. See notes.

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(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

All candidates for superior court shall appear on the same ballot except that the appropriate board of elections may divide the election of superior court judges into two ballots to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot.

(a) **(See editor's note for effective date)** Kinds of General Election Ballots; Right to Combine. — For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

All candidates for the Appellate Division shall appear on the same ballot.

(b) General Election Ballots. —

(1) Ballot for Presidential Electors: On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of G.S. 163-96, and the names of the unaffiliated candidates for President and Vice-President qualified under the provisions of G.S. 163-122 and G.S. 163-209. A separate column shall be assigned to each political party with candidates on the ballot, and a separate column shall be assigned to each pair of unaffiliated candidates for President and Vice-President, if any, and the columns shall be separated by distinct black lines. At the head of each party column the party name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. At the head of the columns for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates", and below it a circle, one-half inch in diameter, and below the circle the names of a pair of unaffiliated candidates for President and Vice-President. On the face of the ballot, above the party column division, the following instructions shall be printed in heavy black type:

a. To vote this ballot, make a cross (X) mark in the circle below the name of the political party for whose candidates you wish to vote or below the heading for the unaffiliated candidates for whom you wish to vote.

b. A vote for the names of a political party's candidates for President and Vice-President is a vote for the electors of that party, and a vote for the names of unaffiliated candidates for President and Vice-President is a vote for electors named by the unaffiliated candidate for President, the names of whom are on file with the Secretary of State.

c. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

(2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and unaffiliated column division:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.

c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

(3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out

in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.
b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and unaffiliated column division:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.
c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
d. If you tear or deface or wrongly mark this ballot, return it and get another."

(4) **(See editor's note for effective date)** State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for State officers, and for all State officers where mechanical voting machines are used shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political

§ 163-140(b)(4) has a delayed effective date. See notes.

party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words "you must also" in instruction c. shall be underlined:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections. If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

(5) **(See editor's note for effective date)** County Ballot: Beneath the title and general instructions set out in this

§ 163-140(b)(5) has a delayed effective date. See notes.

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subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, regular resident superior court judge for the superior court district in which the county or part thereof is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words "you must also" in instruction c. shall be underlined:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race

§ 163-140(b)(5) has a delayed effective date. See notes.

where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

(6) Repealed by Session Laws 1973, c. 793, s. 56.

(7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(8) Order of candidates in multi-seat races. In a multi-seat race, within each political party that has nominated more than one candidate, the names of candidates shall appear on the ballot in alphabetical order from A to Z within that party's column.

(9) **(See editor's note for effective date)** Judicial ballot for superior court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot.

(c) Primary Election Ballots. —

(1) Kinds of Primary Ballots; Right to Combine: For the purposes of primary elections, there shall be five kinds of official ballots, entitled:

a. Primary ballot for United States Senator
b. Primary ballot for member of the United States House of Representatives
c. State primary ballot
d. County primary ballot
e. Repealed by Session Laws 1973, c. 793, s. 56.

Use of official primary ballots shall be limited to the purposes indicated by their titles. The printing on all primary ballots shall be plain and legible but, unless large type is specified by this Chapter, type larger than 10-point shall not be used in printing primary ballots.

Primary ballots shall be prepared in accordance with the provisions of G.S. 163-109 and the provisions of this section as modified by the provisions of this subsection.

(2) **(See editor's note for effective date)** Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Primary ballots shall not provide for voting a straight-party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.

(2) **(See editor's note for effective date)** Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Ballots for primaries held under Article 25 of this Chapter shall be different in color than the ballots of parties. Primary ballots shall not provide for voting a straight-party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.

(3) Rotation of Positions on Ballots Among Candidates: The board of elections, State or county, responsible for printing and distributing primary election ballots shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots; and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(4) Facsimile Signatures: On the bottom of each primary ballot shall be printed an identified facsimile of the signature of the chairman of the board of elections, State or county, responsible for its preparation.

(d) Municipal Primary and Election Ballots. — In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the chairman of the county or municipal board of elections, as appropriate.

(e) Repealed by Session Laws 1977, c. 265, s. 10.

(f) Multi-seat Races. — The General Assembly finds that since the federal court opinion voiding the law which provided that a straight-ticket ballot shall take precedence in counting over a ballot marked for individual candidates, confusion has occurred in the counting of ballots in multi-seat races. In order to minimize the confusion of instructions for marking ballots in multi-seat races, which must be different than those in single-seat races, the General Assembly finds it necessary that these ballots be printed separately, except in the case of mechanical voting machines. On such machines, where it is physically impossible to vote both a straight-ticket and for an individual candidate, without pulling up the lever of an individual candidate, clearly showing the voter's intention, it is unnecessary to have a separate ballot for multi-seat races, and having such a separate ballot would result in more columns and rows on the machine than the mechanical machine can handle.

Multi-seat races in partisan general elections, which except as provided in this section would have appeared on the State ballot or county ballot, and except for multi-seat races on mechanical voting machines, shall be placed on a separate multi-seat ballot or ballots, which shall not be combined with any ballot other than a multi-seat ballot. Beneath the title and general instructions set out in this subsection, the ballot(s) for multi-seat races shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates in multi-seat races and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, and around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy red type to contrast with the type of the rest of the ballot:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party of your choice.

b. You may vote a split ticket in one of two ways:

  (1) By making a cross mark opposite the name of each candidate for whom you wish to vote and making no mark in the party circle, or

(2) By marking the party circle and then making a cross mark opposite the name of each candidate you choose of the party whose circle you marked as well as each candidate you choose of any other party in the race(s) where you wish to vote a split ticket.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

Ballot instructions need not be printed in red type except on the separate ballot(s) for multi-seat races. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 56, 57; 1977, c. 265, s. 10; c. 408, s. 5; 1987, c. 491, s. 1; c. 504; c. 580; c. 713, ss. 1, 8-12; 1991, c. 641, ss. 1-4; c. 761, ss. 32, 32.1; 1991 (Reg. Sess., 1992), c. 782, s. 3; 1993, c. 553, ss. 62, 63; 1996, 2nd Ex. Sess., c. 9, ss. 3-5, 11, 18, 19.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective with respect to elections conducted until 1998. The second version of subsection (a) set out above is effective with respect to elections conducted in 1998 and thereafter.

Subdivision (c)(2) Set Out Twice. — The first version of subdivision (c)(2) set out above is effective with respect to elections conducted until 1998. The second version of subdivision (c)(2) set out above is effective with respect to elections conducted in 1998 and thereafter.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 1996, Second Extra Session, c. 9, s. 24, provides: "Part 1 of this act is effective upon ratification, and applies beginning with the 1996 elections, except that Sections 1 and 2 of this act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections. Part 2 of this act becomes effective with respect to elections conducted in 1998 and thereafter." The Act was ratified August 2, 1996.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 9, s. 11, effective with respect to elections conducted in 1998 and thereafter, added subdivision (a)(8); and deleted "candidates for superior court shall appear on the same ballot except that the appropriate board of elections may divide the election of superior court judges into two ballots to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all" following "All" in the last paragraph of subsection (a). For effective date, see editor's note.

Session Laws 1996, Second Extra Session, c. 9, ss. 18 and 19, effective with respect to elections conducted in 1998 and thereafter, added subdivision (b)(9); and added the second sentence of subdivision (c)(2). For effective date, see editor's note.

Session Laws 1996, Second Extra Session, c. 9, ss. 3, 4, and 5, in subsection (a) in the last paragraph, deleted "If the State Board of Elections divides the State ballot into two or more ballots" at the beginning, substituted "appropriate board of elections" for "State Board of Elections", and deleted "either because of length of the ballot or" preceding "to provide a separate ballot"; deleted "(including judges of the superior court)" preceding "shall be divided" in the first sentence of subdivision (b)(4); and, inserted "regular resident superior court judge for the superior court district in which the county or part thereof is situated" in the first sentence of subdivision (b)(5). For effective date, see editor's notes.

§ 163-152.1. Assistance to blind voters in primaries and elections.

Any blind voter may record a certificate issued by the Department of Health and Human Services, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the appropriate election official shall enter on the voter's registration record the words "blind voter" so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections. The certification presented to the precinct chief judge, the county board of elections, or the person accepting the application to register shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65. (1969, c. 175; 1973, c. 476, s. 143; 1985, c. 563, ss. 16.5, 16.6; 1993 (Reg. Sess., 1994), c. 762, s. 44; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 163-156. Rules when vacancies for superior court judge are to be voted on.

(a), (b) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1037, s. 125, effective January 1, 1989.

(c) **(See editor's note for effective date)** If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article VI, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by Article 10 of this Chapter, without designation as to the vacancy;

(2) If the vacancy occurs beginning on the tenth day before the filing period ends under G.S. 163-106(c), and ending on the sixtieth day before the general election, a nomination shall be made by the appropriate district executive committee of each political party and the names of the nominees shall be printed on the general election ballots, without designation as to the vacancy;

(3) Repealed by Session Laws 1987, c. 485, s. 3.

(4) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made under subdivisions (1) or (2) of this subsection. The persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms.

§ 163-156(c) is set out twice. See notes.

(c) **(See editor's note for effective date)** If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article VI, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by Article 25 of this Chapter, without designation as to the vacancy;

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy;

(3) Repealed by Session Laws 1987, c. 485, s. 3.

(4) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivisions (1) or (2) of this subsection. The persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms. (1985 (Reg. Sess., 1986), c. 986, s. 1; 1987, c. 485, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 125; 1996, 2nd Ex. Sess., c. 9, ss. 19.1, 22.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective with respect to elections conducted until 1998. The second version of subsection (c) set out above is effective with respect to elections conducted in 1998 and thereafter.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 9, s. 19.1, effective with respect to elections conducted in 1998 and thereafter, in subdivision (c)(1) substituted "opening of the filing period under G.S. 163-323(b)" for "tenth day before the filing period ends under G.S. 163-106(c)," and substituted "Article 25" for "Article 10"; rewrote subdivision (c)(2); and inserted "or candidates filed" in subdivision (c)(4). For effective date, see editor's note.

Session Laws 1996, Second Extra Session, c. 9, s. 22, effective August 2, 1996, and applicable to vacancies to be filled by elections conducted on or after that date, in subsection (c) in the introductory language, substituted "If a vacancy occurs" for "When there is no election" at the beginning, substituted "judge, and on account of the occurrence of such vacancy" for "judge for full terms, and," deleted "unexpired" preceding "terms in that district," inserted "to fill the vacancy or vacancies," and inserted "G.S. 163-9 and"; substituted "vacancy" for "unexpired term" following "If the" in subdivisions (c)(1) and (c)(2); and in subdivision (c)(4) substituted "to fill the vacancy" for "of all unexpired terms", and substituted "term or terms to be filled shall be elected to the term" for "unexpired term or terms, shall be elected to the unexpired term."

Article 14.

Voting Systems.

§ 163-166: Repealed by Session Laws 1997-443, s. 31, effective July 1, 1997.

Article 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ 163-175. County board of elections to canvass returns.

On the third day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A.M. at the county courthouse or at the office of the county board of elections (the choice of location to be at the option of the county board of elections) to canvass the votes cast in the county and prepare the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

(1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.

(2) In an election, the number of legal votes cast in [each] precinct for each candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to pass judicially upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and to determine judicially the result of the primary or election. Provided, however, that where a petitioner has been denied a recount upon a verbal or written order of the State Board of Elections pursuant to regulations of the State Board, the county board of elections shall not make or order a further recount. The board shall also have power to send for papers and persons and to examine them and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result. (1915, c. 101, s. 27; 1917, c. 218; C.S., s. 6048; 1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1; 1977, c. 265, s. 13; 1981, c. 304; 1987, c. 491, s. 4; 1995 (Reg. Sess., 1996), c. 553, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 6, 1996, substituted "third day" for "second day" in the first sentence of the first paragraph; and added the last sentence of the third paragraph.

ARTICLE 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-191. (See editor's note for effective date) Contested primaries and elections; how tie broken.

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior court judge the tie shall be broken in accordance with Article 25 of this Chapter. (1901, c. 89, s. 44; Rev., s. 4363; 1915, c. 121, s. 1; C.S., s. 5999; 1927, c. 260, s. 14; 1933, c. 165, s. 10; 1967, c. 775, s. 1; 1971, c. 219, ss. 1, 2; 1996, 2nd Ex. Sess., c. 9, s. 20.)

For this section as in effect with respect to elections conducted until 1998, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective with respect to elections conducted in 1998 and thereafter, substituted "except if there is a tie for superior court judge the tie shall be broken in accordance with Article 25 of this Chapter" for "vote" at the end of the last paragraph. For effective date, see editor's note.

§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.

(a) After Primary. — At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, and United States Senators.

(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several district court districts in the State.

(3a) For superior court judges for the several superior court districts in the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. — At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. — The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 7; 1967, c. 775, s. 1; 1969, c. 44, s. 87; 1987, c. 491, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1037, s. 126; 1991 (Reg. Sess., 1992), c. 927, s. 2; 1993, c. 553, s. 65; 1996, 2nd Ex. Sess., c. 9, s. 6.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 1996, Second Extra Session, c. 9, s. 24, provides: "Part 1 of this act is effective upon ratification, and applies beginning with the 1996 elections, except that Sections 1 and 2 of this act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections." The Act was ratified August 2, 1996.

Effect of Amendments. — The 1996 Second Extra Session amendment deleted "judges of the superior court" following "Court of Appeals" in subdivisions (a)(1) and (b)(2); and added subdivisions (a)(3a) and (b)(4a). For effective date, see editor's notes.

ARTICLE 17.

Members of United States House of Representatives.

§ 163-201. Congressional districts specified.

(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1998 and every two years thereafter, the State of North Carolina shall be divided into 12 districts as follows:

District 1: Beaufort County: Chocowinity township, Richland township, Washington township: the remainder not in District 3; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: the remainder not in District 3; Jasper *; Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *; Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Pollocksville *, Trenton *, White Oak *; Lenoir

County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *; Martin County, Northampton County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *; Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *; Wilson County: Black Creek *, Gardners *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Turkey *, Westbrook *; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-31 *, Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

District 3: Beaufort County: Bath township, Long Acre township, Pantego township, Washington township: Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Carteret County: Carteret County; Chowan County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croatan *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *; Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *; Lenoir County: Falling Creek *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlington *; Onslow County, Pamlico County; Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *; Tyrrell County, Washington County: Scuppernong *, Skinnersville *; Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, New Hope *, Oakland *, East Williams *, West Williams *; Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01-04 *, Raleigh 01-11 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys # 7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

District 5: Alamance County: Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *, South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #7 *, Burlington #8 *, Faucette *, East Graham *, North Graham *, West Graham *, Graham #3 *, Haw River *, North Melville *, South Melville *, Morton *, Pleasant Grove *; Alleghany County; Ashe County; Caswell County, Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Rockingham County, Stokes County; Surry County.

District 6: Alamance County: Albright *, Burlington #9 *, Coble *, South Graham *, Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Chatham County: North Siler City *, South Siler City *; Davidson County: Alleghany *, Central *, Holly Grove *, Liberty *, Cotton *, Southmont *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *, Lexington No. 2 *, Ward No. 6 *, Welcome *, Silver Hill *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-16 *, GB-17 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-04 *, HP-08 *, HP-09 *, HP-14 *, HP-16 *, HP-17 *, HP-18 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, South Sumner *, North Washington *, South Washington *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County: Moore County; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, Trading Ford, West Ward II *, Trading Ford Noncontiguous A, Steele *.

District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #2 *, Seventy First #3 *; Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *, Rowan *, Garland *, Lakewood *.

District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Scotland County, Stanly County; Union County.

District 9: Cleveland County, Gaston County, Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 10 *, Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract 0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 361; Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *, CCK *, CO1 *, LEM *, LC1 — North, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.

District 10: Alexander County; Avery County; Burke County, Caldwell County, Catawba County, Iredell County: Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *, Statesville #4 *, Statesville #5 *, Turnersburg *, Union Grove *; Lincoln County, Mitchell County, Watauga County; Wilkes County, Yadkin County.

District 11: Buncombe County, Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.

District 12: Davidson County: Abbotts Creek *, Arcadia *, Boone *, Hampton *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Midway *, Reeds *, Tyro *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 8 *, Yadkin College *; Forsyth County: Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *, GB-18 *, GB-19 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, HP-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-15 *, HP-19 *, HP-22 *, Jamestown-1 *, Jamestown-2 *, North Sumner *, GB-24B *, GB-26B *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *, Statesville #3 *, Statesville #6 *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 77 *: the remainder not in District 9; Charlotte Pct. 78 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 — South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County: Cleveland *, Franklin *, East Spencer *, Spencer *, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward III *, Scotch Irish *, Unity *.

(b) The names and boundaries of townships, precincts (voting tabulation districts), tracts, block groups, and blocks, specified in this section are as they were legally defined and recognized in the 1990 U.S. Census, except as provided in subsection (c) of this section. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files, with such modifications as made by the Legislative Services Office and shown on its computer database as of May 1, 1991, to reflect census blocks divided by prior district boundaries, and precincts added or modified as outlined in subsection (c) of this section.

(c)(1) For Guilford County, precinct boundaries for High Point Precincts 20, 23, and 24 are as modified by the Guilford County Board of Elections and shown on the Legislative Services Office computer database as of May 1, 1991.

(2) For Mecklenburg County, precinct boundaries are as altered by the Mecklenburg County Board of Elections as reported to the Legislative Services Office and shown on the Legislative Services Office computer database as of May 1, 1991.

(3) For Wake County:

a. St. Marys Precinct #7 is as created by the Wake County Board of Elections out of St. Marys Precinct #4;

b. Raleigh 01-27 Part is an area reported by the Bureau of the Census as part of Raleigh 01-23 but has been put by the Wake County Board of Elections in Raleigh 01-27; and

c. VTD ZZZZ has been assigned to the appropriate parts of Wake Forest #1 and Wake Forest #2,

all as shown on the Legislative Services Office computer database as of May 1, 1991.

(4) For Anson, Bertie, Camden, Caswell, Franklin, Gates, Greene, Hertford, Hoke, Lee, Lincoln, Martin, Mitchell,

Northampton, Pasquotank, Perquimans, Person, Tyrrell, Vance, Warren, and Yadkin Counties, precincts are as shown on maps on file with the Legislative Services Office as of May 1, 1991, except that:
a. In Anson County, Lanesboro #1 and Lanesboro #2 are listed together as Lanesboro #1 and #2;
b. In Vance County, where West Henderson II is not contiguous, the northerly part is listed as West Henderson IIA and the southerly part as West Henderson IIB;
c. In Perquimans County, computer VTD Code 0005 (Tract 9801, Block 550A) is actually part of Belvidere Precinct and is districted with it notwithstanding any description above;
d. In Greene County, Snow Hill Town Satellite is Tract 9503, Block 301A which is a part of Snow Hill Town Precinct entirely surrounded by Sugg Precinct and is districted with Sugg Precinct notwithstanding any description above;
e. In Greene County, Snow Hill Town Sat B is Tract 9503, Block 224B which is a part of Snow Hill Town Precinct entirely surrounded by Snow Hill Rural Precinct and is districted with Snow Hill Rural Precinct notwithstanding any description above;
f. In Mecklenburg County, Precinct XMC2 Noncontiguous is Tract 55.01, Block 303C, and is districted with Precinct MC1 notwithstanding any description above;
g. In Martin County, any listing of VTDs not defined consists of Tract 9705, Block 413 (which is in Poplar Point Precinct), Tract 9704, Block 202 (which is in Goose Nest Precinct), and Tract 9706, Block 168A (which is in Robersonville #2 Precinct), and those blocks are districted with those respective precincts regardless of any listing above;
h. In New Hanover County, Tract 123.98, Blocks 307B, 308A, 309, 310A, 311A, and 312A, listed by the Census Bureau as part of VTD ZZZZ, are districted by this section as part of Wilmington #2.

(5) If any precinct or township boundaries are changed, such changes shall not change the boundaries of the Congressional Districts, which shall remain the same.

(6) In the case where any individual blocks are listed above, the district allocation of unlisted water blocks shall be as found on maps and statistical reports of the districts on file with the Secretary of State.

(c1) In this section:

(1) Wake County Tract 0510, Block 301 is shown on the computer database as part of Raleigh 01-23 * when it is in fact correctly shown on the Board of Elections map as part of Raleigh 01-27;

(2) Vance County Tract 9606 Blocks 248 and 227A are shown on the computer database as part of Hilltop, when they are in fact correctly shown on the Board of Elections map as part of North Henderson II and East Henderson I, respectively.;

(3) Lincoln County Tract 0706.98 Block 307 is shown on the computer database as part of North Brook I/II when it is in

fact correctly shown on the Board of Elections map as part of North Brook III;

(4) Mecklenburg County Tract 0044 Block 906F is shown on the computer database as part of OAK when it is in fact correctly shown on the Board of Elections map as part of Charlotte Pct. 16;

(5) Granville County Tract 9703, Block 330B is districted with Corinth * Precinct notwithstanding any description above.

(c2) If any precinct or township is listed in a district in this section, with a comma after the name of the precinct or township, followed by a listing of census geography within that precinct, and other parts of that precinct or township are not listed in another district, that precinct or township is in fact whole within the district with which it is listed.

(d) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district;

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 1990 United States Census; or

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Rev., s. 4366; 1911, c. 97; C.S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109; 1971, c. 257; 1981, c. 894; 1982, Ex. Sess., c. 7; 1991, c. 601, s. 1; c. 761, s. 33(a), (b); 1991, Ex. Sess., c. 7, s. 1; 1993, c. 553, s. 66; 1997-11, ss. 1, 2; 1997-456, s. 27; 1997-456, s. 52.)

Editor's Note. —

Session Laws 1997-11, s. 1, as amended by Session Laws 1997-456, s. 52, effective August 29, 1997, repealed Session Laws 1991, Ex. Sess., c. 7, s. 1, which rewrote subsection (a).

Subsection (c) of this section was renumbered as subdivisions (c)(1) through (c)(6) pursuant to S.L. 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1997-11, s. 3, provides: "In the event that a court of competent jurisdiction holds that the plan enacted by Section 2 of this act is invalid because the total population range violates the one-person one-vote doctrine, and that decision is not reversed, then the plan enacted by Section 2 of this act in G.S. 163-201 is repealed and the following plan enacted in G.S. 163-201:

"District 1: Beaufort County: Chocowinity township, Long Acre township: Tract 9905: Block Group 3: Block 305, Block 306, Block 307, Block 308; Block Group 5: Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522B, Block 530; Richland township, Washington township; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: Tract 9604: Block Group 5: Block 516, Block 517, Block 518, Block 521D, Block 530B, Block 531C, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547A, Block 547B, Block 548, Block 549, Block 550, Block 556, Block 558, Block 559, Block 560, Block 561, Block 562B, Block 563, Block 564, Block 565, Block 566, Block 567, Block 568, Block 569, Block 570, Block 571, Block 572; Block Group 7: Block 711B, Block 712B, Block 738B, Block 739, Block 740, Block 741, Block 742, Block 743; Jasper *; Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East

Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *; Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Pollocksville *, Trenton *, White Oak *; Lenoir County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *; Martin County, Northampton County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *; Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *; Wilson County: Black Creek *, Gardners *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *: Tract 0001: Block Group 3: Block 304, Block 305, Block 306, Block 307, Block 314, Block 315, Block 320, Block 321; Block Group 4: Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 420, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429; Tract 0002: Block Group 1: Block 104; Tract 0004: Block Group 1: Block 101, Block 102, Block 104, Block 126, Block 127; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222; Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

"District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Southwest Clinton *: Tract 9706: Block Group 3: Block 332, Block 333, Block 334, Block 340, Block 342, Block 343; Tract 9708: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157; Block Group 2: Block 203B, Block 203C, Block 205C, Block 206, Block 209, Block 217; Turkey *, Westbrook *; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-31 *: Tract 0511: Block Group 2: Block 202, Block 214; Tract 0523: Block Group 1: Block 134; Block Group 9: Block 905; Tract 0524.01: Block Group 1: Block 124, Block 125; Block Group 9: Block 918B, Block 918Y, Block 918Z; Tract 0524.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 111, Block 118, Block 119; Tract 0524.03: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 123, Block 126, Block 140, Block 141, Block 142, Block 143; Block Group 2: Block 201, Block 202, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 221, Block 222, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231; Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson C *: Tract 0004: Block Group 2: Block 207; Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

"District 3: Beaufort County: Bath township, Long Acre township: Tract

9901: Block Group 1: Block 108A, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122A, Block 170, Block 171, Block 172, Block 173, Block 174; Tract 9902: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129A, Block 130A, Block 157A, Block 158A, Block 159A, Block 160A, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 174, Block 175A, Block 176A, Block 177, Block 178, Block 179, Block 180, Block 181, Block 182, Block 183, Block 184, Block 185A, Block 186A, Block 187A, Block 188, Block 192, Block 193, Block 194; Tract 9905: Block Group 1, Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329A, Block 329B, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344; Block Group 4: Block 403A, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430; Block Group 5: Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 522C, Block 522D, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528B, Block 529, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 569, Block 577, Block 578, Block 579, Block 580, Block 581; Tract 9906: Block Group 1, Block Group 2: Block 225B, Block 235C; Block Group 4: Block 404B, Block 406, Block 407, Block 411, Block 412, Block 413, Block 414, Block 415, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434B, Block 435B; Pantego township; Camden County, Carteret County; Chowan County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croatan *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *; Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *; Lenoir County: Falling Creek *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlington *; Onslow County, Pamlico County; Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *; Tyrrell County, Washington County: Scuppernong *, Skinnersville *; Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

"District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, South Siler City *: Tract 0203: Block Group 2: Block 201A; New Hope *, Oakland *, East Williams *, West Williams *; Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01-04 *, Raleigh 01-11 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-31 *: Tract 0524.01: Block Group 9: Block 934; Tract 0524.02: Block Group 1: Block 105A, Block 105B;

Block Group 2: Block 201A; Tract 0524.03: Block Group 1: Block 116, Block 118, Block 119, Block 120, Block 121, Block 125, Block 127, Block 128, Block 148; Block Group 2: Block 243; Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys # 7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

"District 5: Alamance County: Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *, South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #7 *, Burlington #8 *, Faucette *, East Graham *, North Graham *, West Graham *, Graham #3 *, Haw River *: Tract 0203: Block Group 6: Block 601F, Block 601G, Block 601H, Block 601J, Block 603C, Block 603D, Block 604, Block 605, Block 606, Block 607, Block 608; Block Group 7: Block 701D, Block 701E, Block 701G; Block Group 8: Block 801, Block 802C; Tract 0211: Block Group 1: Block 101, Block 102D, Block 102F; Block Group 2: Block 201, Block 203A, Block 204D; Tract 0212.01: Block Group 1: Block 101B, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129A, Block 129B, Block 129C, Block 130, Block 131, Block 132A, Block 132B, Block 133A, Block 133B, Block 134, Block 135, Block 136, Block 137; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205B, Block 212B, Block 214B, Block 218B, Block 219A, Block 219B, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226A, Block 226B, Block 227A, Block 227B, Block 228; Block Group 3, Block Group 4: Block 401, Block 402, Block 403A, Block 403B, Block 403C, Block 404A, Block 404B, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415A, Block 415B, Block 416A, Block 416B, Block 417A, Block 417B, Block 418, Block 419, Block 420A, Block 420B, Block 420C, Block 421A, Block 421C, Block 421E, Block 421F, Block 422, Block 423, Block 424, Block 425A, Block 425B, Block 426A, Block 426B, Block 426C, Block 427, Block 428, Block 429A, Block 429B, Block 432, Block 433B, Block 433C, Block 434A, Block 434B; Block Group 5; Tract 0213: Block Group 1: Block 104C, Block 105B, Block 106B; Block Group 2: Block 206B, Block 212B, Block 213B, Block 214, Block 226; North Melville *, South Melville *, Morton *, Pleasant Grove *; Alleghany County; Ashe County; Caswell County, Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mineral Springs F. St *: Tract 0029.01: Block Group 1: Block 107, Block 108, Block 119, Block 120, Block 121, Block 122, Block 124; Tract 0029.02: Block Group 2: Block 211A; Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem

School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Rockingham County, Stokes County; Surry County.

"District 6: Alamance County: Albright *, Burlington #9 *, Coble *, South Graham *, Haw River *: Tract 0211: Block Group 1: Block 102G, Block 103C; Block Group 2: Block 203C; Tract 0212.01: Block Group 4: Block 421B, Block 421D, Block 430, Block 431, Block 433A, Block 433D, Block 435A, Block 435B, Block 435C, Block 436A, Block 436B, Block 437, Block 438, Block 439A, Block 439B, Block 440, Block 441, Block 442; Tract 0220: Block Group 1: Block 131C, Block 133B; Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Chatham County: North Siler City *, South Siler City *: Tract 0202: Block Group 2: Block 246, Block 247; Tract 0203: Block Group 1: Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152A, Block 152B, Block 153, Block 154, Block 155, Block 156, Block 157A, Block 157B, Block 158, Block 159A, Block 159B, Block 160A, Block 160B, Block 161, Block 162A, Block 162B, Block 163, Block 164A, Block 164B, Block 165, Block 166, Block 167; Block Group 2: Block 201B, Block 202, Block 203A, Block 203B, Block 204A, Block 204B, Block 205, Block 206, Block 207, Block 208A, Block 208B, Block 209, Block 210A, Block 210B, Block 211A, Block 211B, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219A, Block 219B, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225A, Block 225B, Block 226, Block 227, Block 228, Block 229A, Block 229B, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235A, Block 235B, Block 235C, Block 236, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245A, Block 245B, Block 246, Block 247, Block 248, Block 252A, Block 252B, Block 253, Block 254; Tract 0204: Block Group 2: Block 234, Block 235, Block 236, Block 241, Block 242, Block 243; Block Group 3, Block Group 4, Block Group 5: Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547; Block Group 6: Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632, Block 633, Block 634, Block 635, Block 638, Block 643, Block 644, Block 645, Block 646, Block 647, Block 648, Block 649, Block 650, Block 651, Block 652, Block 653, Block 654; Tract 0206: Block Group 1: Block 108; Davidson County: Alleghany *, Central *, Holly Grove *, Liberty *, Cotton *, Southmont *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *, Lexington No. 2 *, Ward No. 6 *, Welcome *, Silver Hill *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-16 *, GB-17 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-04 *, HP-08 *, HP-09 *, HP-14 *, HP-16 *, HP-17 *, HP-18 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, South Sumner *, North Washington *, South Washington *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County: Moore County; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, Trading Ford, West Ward II *, Trading Ford Noncontiguous A, Steele *.

"District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #1 *: Tract 0033.02: Block Group 3: Block 307, Block 308, Block 312, Block 313; Seventy First #2 *, Seventy First #3 *; Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *: Tract 9708: Block Group 2: Block 204, Block 205B, Block 207, Block 208; Block Group 3: Block 309, Block 310, Block 311A, Block 311B, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 319; Block Group 4: Block 410, Block 411, Block 412; Rowan *, Garland *, Lakewood *.

"District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *: Tract 0033.01, Tract 0033.02: Block Group 1, Block Group 3: Block 301, Block 303, Block 304, Block 305, Block 306, Block 309, Block 310, Block 314; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Scotland County, Stanly County; Union County.

"District 9: Cleveland County, Gaston County, Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 10 *, Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract 0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 361; Charlotte Pct. 79 *: Tract 0043.01: Block Group 3: Block 306, Block 307, Block 322, Block 323; Tract 0059.01: Block Group 2: Block 201Y, Block 201Z, Block 202, Block 203A, Block 203B, Block 204, Block 210A, Block 210B, Block 211A, Block 211B, Block 212, Block 213, Block 215, Block 216, Block 217, Block 218, Block 219, Block 222A, Block 222B, Block 223, Block 224; Tract 0060.01: Block Group 4: Block 413, Block 414, Block 418, Block 420, Block 421, Block 423A, Block 423B, Block 423C, Block 424, Block 425, Block 426, Block 427, Block 428, Block 430, Block 431; Charlotte Pct. 80 *, Charlotte Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *, CCK *, CO1 *, LEM *, LC1 — North, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.

"District 10: Alexander County; Avery County; Burke County, Caldwell County, Catawba County, Iredell County: Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *: Tract 0601: Block Group 3: Block 311, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319B, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 337; Block Group 4; Tract 0602: Block Group 1: Block 113; Block Group 3: Block 301, Block 302; Tract 0605: Block Group 3: Block 319, Block 320, Block 330; Tract 0606: Block Group 1: Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138A, Block 140, Block 141, Block 142, Block 143, Block 144; Block Group 3: Block 301B, Block 303B, Block 304, Block 305B, Block 315C, Block 316, Block 318, Block 319, Block 320, Block 321, Block 324B, Block 325B; Statesville #4 *, Statesville #5 *, Turnersburg *, Union Grove *; Lincoln County, Mitchell County: Bakersville, Bandana, Bradshaw, Cane Creek, Little Rock Creek, Glenn, Grassy Creek, Harrell, Poplar: Tract 9501: Block Group 3: Block 323B; Red Hill, Snow Creek;County: Watauga County; Wilkes County, Yadkin County.

"District 11: Buncombe County, Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Mitchell County: Poplar: Tract 9501: Block Group 3: Block 301B, Block 302, Block 303, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 324B, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330B, Block 332, Block 333, Block 334, Block 335B; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.

"District 12: Davidson County: Abbotts Creek *, Arcadia *, Boone *, Hampton *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Midway *, Reeds *, Tyro *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 8 *, Yadkin College *; Forsyth County: Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *: Tract 0015: Block Group 1, Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206; Block Group 4: Block 403, Block 404, Block 407, Block 408, Block 409, Block 411, Block 412, Block 414, Block 417, Block 418, Block 419, Block 420; Block Group 5: Block 501, Block 502, Block 503, Block 504B, Block 505A, Block 506, Block 507, Block 509, Block 510, Block 511A, Block 514A, Block 515, Block 516; Tract 0016.01: Block Group 1: Block 103A, Block 106A, Block 117A, Block 119A; Block Group 3: Block 301, Block 302, Block 303, Block 307, Block 308; Tract 0029.01: Block Group 1: Block 111, Block 112, Block 123; Block Group 9: Block 908; Tract 0029.02: Block Group 3: Block 301A, Block 302, Block 303A, Block 304, Block 305, Block 306, Block 307A, Block 308A, Block 309A, Block 313A, Block 314A; Mt. Sinai Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *, GB-18 *, GB-19 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, HP-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-15 *, HP-19 *, HP-22 *, Jamestown-1 *, Jamestown-2 *, North Sumner *, GB-24B *, GB-26B *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *, Statesville #2 *: Tract 0606: Block Group 3: Block 305A, Block 306, Block 307, Block 308, Block 309, Block 310, Block 312, Block 313, Block 314, Block 315A, Block 315B, Block 317, Block 322, Block 323A, Block 338, Block 339; Block Group 5: Block 511; Statesville #3 *, Statesville #6 *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 77 *: Tract 0038.04: Block Group 2; Tract 0058.06: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108A, Block 109, Block 110, Block 111A, Block 124A, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130; Tract 0059.03: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 343, Block 386, Block 387; Charlotte Pct. 78 *, Charlotte Pct. 79 *: Tract 0043.01: Block Group 3: Block 305, Block 311, Block 316, Block 317, Block 321; Tract 0059.01: Block Group 2: Block 214, Block 220; Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 — South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County: Cleveland *, Franklin *, East Spencer *, Spencer *, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward III *, Scotch Irish *, Unity *."

Effect of Amendments. — Session Laws 1997-11, s. 2, effective March 31, 1997, added present subsection (a).

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ 163-226. Who may vote an absentee ballot.

(a) Who May Vote Absentee Ballot; Generally. — Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

(1) The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which the voter desires to vote;

(2) The voter is unable to be present at the voting place to vote in person on the day of the specified election in which the voter desires to vote because of the voter's sickness or other physical disability;

(3) The voter is incarcerated, whether in the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of the voter's residence in any election, specified herein, in which the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;

(3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or

(4) The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and the voter's assigned duties on the day of the election will cause the voter to be unable to be present at the voting place to vote in person and provided such employee has the application witnessed by the chairman of the county board of elections.

(b) Absentee Ballots; Exceptions. — Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1; 1973, c. 536, s. 1; c. 1018; 1977, c. 469, s. 1; 1979, c. 140, s. 1; 1995 (Reg. Sess., 1996), c. 561, s. 1; c. 734, s. 5.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 561, s. 1, effective with respect to elections conducted on or after January 1, 1997, in subsection (a), substituted "the voter" for "he" and "the voter's" for "his" throughout the subsection, deleted "or" from the end of subdivisions (a)(1) and (a)(2), added subdivision (a)(3a), and in subdivision (a)(4), substituted "the voter" for "him" preceding "to be unable", and substituted "the application" for "his application."

Session Laws 1995 (Reg. Sess., 1996), c. 734, s. 5, effective June 21, 1996, at the beginning of subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) substituted "The voter" for "He"; and in subdivision (a)(4), inserted "or a precinct official, observer, or ballot counter, in another precinct", substituted "the voter's" for "his", and "the voter" for "him", and substituted "the application" for "his application."

§ 163-227. State Board to prescribe form of application for absentee ballots; county to secure.

(a) Applications for Absentee Ballots Generally. — A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 50 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Tuesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the standard application form to be secured by the county board of elections, as designed and prescribed by the State Board of Elections. The form shall contain lines to be checked off by each of the kinds of voters specified below:

(1) A voter expecting to be absent from the county of his residence all day on the day of the specified election, or who is otherwise entitled to cast an absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a) or 163-226(a)(4). (G.S. 163-226(a)).

(2) A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the day prior to the date of the specified election. (G.S. 163-226(a)(2)).

(3) Repealed by Session Laws 1991, c. 727, s. 6.1, effective with respect to elections occurring on or after January 1, 1992.

(4) A voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a

person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.

(b) Types of Applications; Instructions. —

(1) Expected Absence from County on Election Day, or other Permitted Reason. — A voter expected to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections. The provisions of this subdivision also apply with respect to persons entitled to vote by absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a), or 163-226(a)(4).

The applicant shall sign his application personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the director of elections of the county board of elections.

(2) Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the day prior to the Primary or General Election. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the day before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative or verifiable legal guardian by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative or verifiable legal guardian to the chairman or director of elections of the county board of elections of the county in which the applicant is registered.

(3) Repealed by Session Laws 1991, c. 727, s. 6.1, effective with respect to elections occurring on or after January 1, 1992.

(4) "One-Stop" Voting Procedure, in Office of the County Board of Elections. — A voter falling in the category specified in

G.S. 163-227.2 may execute an application form and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. — The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the director of elections of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

(1) The chairman, secretary or director of elections may deliver the form to a voter personally or to his near relative or verifiable legal guardian at the office of the county board of elections for the voter's own use; or

(2) The chairman, secretary or director of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative or verifiable legal guardian.

At the time he issues an application form, the chairman, secretary or director of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or director of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, or verifiable legal guardian, the chairman, secretary or director of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or director of elections shall issue only one application form to a voter or his near relative or verifiable legal guardian unless a form previously issued is returned to the chairman, secretary or director of elections and marked "Void" by him. In such a situation, the chairman, secretary or director of elections may issue another application form to the voter or a near relative or verifiable legal guardian, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative or verifiable legal guardian, the chairman, secretary or director of elections shall write the name of the near relative or verifiable legal guardian on the index of near relatives or verifiable legal guardians, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

(3) Applications or Absentee Ballots Transmitted by Mail or in Person. — An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative or verifiable legal guardian and shall be valid only when transmitted to the chairman or director of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal verifiable guardian.

(4) Who Is Authorized to Request Applications for Absentee Ballots. — A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative or verifiable legal guardian. For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, or grandchild.

(5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.

(6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:

"This application is issued for absentee ballots to be voted in the .... (primary or general or special election) to be held in .... County on the .... day of ...., 19 ...." The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.

(7) No applications shall be issued earlier than 50 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 50 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 50 days prior to the election.

(8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or verifiable legal guardian authorized to make application. No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c. 952, s. 3; 1971, c. 947, ss. 1-5; 1973, c. 536, s. 1; c. 1075, ss. 1-3; 1975, c. 19, s. 69; c. 844, s. 11; 1977, c. 469, s. 1; c. 626, s. 1; c. 680; 1981, c. 155, s. 3; c. 305, s. 1; 1983, c. 331, s. 3; 1985, c. 563, s. 2; c. 600, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; 1989, c. 635, s. 5; 1989 (Reg. Sess., 1990), c. 991, s. 1; 1991, c. 337, s. 1; c. 636, s. 21; c. 727, s. 6.1; 1995, c. 243, s. 1; 1995 (Reg. Sess., 1996), c. 561, ss. 2, 3.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 561, ss. 2 and 3, effective with respect to elections conducted on or after January 1, 1997, substituted "election, or who is otherwise entitled to cast an absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a) or 163-226(a)(4). (G.S. 163-226(a))" for "election. (G.S. 163-226(a)(1)" in subdivision (a)(1); and in the first paragraph of subdivision (b)(1), inserted "or other Permitted Reason" and added the last sentence.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

(a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) Not earlier than the first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the director of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, director of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, director of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, director of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, director of elections of the board, or full-time employee, authorized by the board shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member or director of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2)b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.

(e) The voter shall vote his absentee ballot in a voting booth and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote his absentee ballot in that room. The voting booth shall be in the office of the county board of elections. If the voter needs assistance in getting to and from the voting booth and in preparing and marking his ballots or if he is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c) (4), or the voter's legal guardian shall be entitled to assist the voter.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230(3)a., or shall have an equivalent identifier to allow for retrievability. The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time. (1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3; 1981, c. 305, s. 2; 1985, c. 600, s. 4; 1987, c. 583, s. 4; 1989, c. 520; 1989 (Reg. Sess., 1990), c. 991, s. 2; 1993 (Reg.

Sess., 1994), c. 762, s. 53; 1995, c. 243, s. 1; c. 509, ss. 117, 118; 1995 (Reg. Sess., 1996), c. 561, s. 4; 1997-510, s. 2.)

Local Modification. — Durham: 1995 (Reg. Sess., 1996), c. 717, s. 1; Pasquotank: 1995 (Reg. Sess., 1996), c. 568, s. 1; Randolph: 1995 (Reg. Sess., 1996), c. 717, s. 1; Wake: 1995 (Reg. Sess., 1996), c. 717, s. 1; Watauga: 1995 (Reg. Sess., 1996), c. 717, s. 1; Wilson: 1995 (Reg. Sess., 1996), c. 599, s. 1.

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective with respect to elections conducted on or after January 1, 1997, substituted "G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4)" for "G.S. 163-226(a)(2) or G.S. 163-226(a)(4)" in subsection (a).

The 1997 amendment, effective September 17, 1997, substituted "first business day after the twenty-fifth day" for "twenty-fourth day" in the first sentence of subsection (b); and added subsection (e1).

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. — In accordance with the provisions of G.S. 163-230(3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots. Separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope. — In time for use not later than 50 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

"Certification of Election Official

The undersigned election official does by his hand and seal certify that .... is a registered and qualified voter of .... County, Precinct # ...... and has made proper application to vote under the Absentee Ballot Law of North Carolina.

.... (Seal)
Chairman-Member"

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"Certificate of Absentee or Sick Voter
State of ....
County of ....

I, ..., do certify that I am a resident and registered voter in ...... precinct, ... County, North Carolina; that on the day of an election, ..., ... (check whichever of the following statements is correct.)

( ) I will be absent from the county in which I reside.

( ) Due to sickness or physical disability, or incarceration as a misdemeanant, I will be unable to travel to the voting place in the precinct in which I reside.

( ) Due to the observance of a religious holiday pursuant to the tenets of my religion, I will be unable to cast a ballot at the polling place on the day of the election.

I further certify that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.

....
(Signature of voter)

....
Signature of Witness #1 Signature of Witness #2

....
Address of Witness #1 Address of Witness #2".

(c) Instruction Sheets. — In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5; 1973, c. 536, s. 1; 1975, c. 844, s. 13; 1977, c. 469, s. 1; 1985, c. 562, ss. 3, 4; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 583, s. 3; 1989, c. 635, s. 5; 1995 (Reg. Sess., 1996), c. 561, s. 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective with respect to elections conducted on or after January 1, 1997, in the certificate in subdivision (b)(2), deleted the year prefix "19", and added the last statement.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-271. Intimidation of voters by officers made misdemeanor.

CASE NOTES

Cited in Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds

of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee.

(7) The term "corporation" means any corporation doing business in this State under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, in support of or in opposition to any candidate, political committee, referendum committee, or political party.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers,

or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of an election already held. The term includes, without limitation, any political party's State, county or district executive committee.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96.

(16) The term "political purpose" means any purpose in aid of seeking to influence an election or a political party or candidate.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum.

(18b) The term "referendum committee" means a combination of two or more individuals or any business entity, corporation, insurance company, labor union, professional association, committee, association, or organization, the primary or incidental purpose of which is to support or oppose the passage of any referendum on the ballot, or to influence or attempt to influence the result of a referendum, or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the outcome of any referendum, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of a referendum already held.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — Session Laws 1997-515, ss. 3(a), 3(b) and 3(c), effective September 17, 1997, applicable to primaries, elections, and referenda beginning in 1998, in subdivision (1) inserted "or municipal" preceeding "board of elections" in the first sentence, and added "and the county... referenda" to the end; in subdivision (18) deleted "provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices."; and in subdivision (18a) inserted "a unit of local government, or by the people under any applicable local act" in the first sentence, and substituted "includes" for "does not include" in the second sentence.

Session Laws 1997-515, ss. 7(b), (c) and (d), effective January 1, 1998, and applicable to all reports due on or after that date, added subsection (7a), (7b) and (8a).

§ 163-278.7A. Gifts from federal political committees.

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee:

(1) Is registered with the State Board of Elections consistent with the provisions of this Article;

(2) Complies with reporting requirements specified by the State Board of Elections;

(3) Makes its contributions within the limits specified in this Article; and

(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary. (1995 (Reg. Sess., 1996), c. 593, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 593, s. 2, made this section effective upon ratification. The Act was ratified June 20, 1996.

§ 163-278.9. Statements filed with Board.

(a) Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the primary election. A candidate who is not on the ballot in the primary and who has filed a first quarter report pursuant to subdivision (5a) of this subsection shall not be required to file a separate preprimary report under this subdivision.

(3) Postprimary Report(s). — Repealed by Session Laws 1997-515, s. 1.

(4) Preelection Report. — Repealed by Session Laws 1997-515, s. 1.

(4a) 48-Hour Report. — A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report.

(5) Repealed by Session Laws 1985, c. 164, s. 1.

(5a) Quarterly Reports. — During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Semiannual Reports. — If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall

be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Session Laws 1985, c. 164, s. 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.8 or G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be made under oath.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer. (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730; 1981, c. 837, s. 2; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A; 1997-515, ss. 1(a), 4(d1), 5(a), 12(a).)

Editor's Note. — Session Laws 1997-515, s. 1(b), provides: "The State Board of Elections shall study the feasibility of requiring monthly reporting by campaign treasurers during even-numbered years, with weekly reports required during the month before each primary and election. The State Board shall report in writing to the General Assembly by March 1, 1998."

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — Laws 1997-515, s. 1, effective January 1, 1998, and applicable to all financial activity occurring on or after that date, in subsection (a) added "Except as provided in G.S. 163-278.10A" to the beginning of the introductory language; added the second sentence in subdivision (a)(1); deleted subdivisions (a)(3) and (a)(4) regarding postprimary reports and preelection reports; added subdivision (a)(5a); and rewrote subdivision (a)(6).

Session Laws 1997-515, s. 4, effective September 17, 1997, applicable to primaries, elections, and referenda beginning in 1998, deleted "in a city with a population of 50,000 or greater, which are required to submit reports by G.S. 163-278.6(18)" preceding "are not subject" in subsection (d).

Session Laws 1997-515, s. 5, effective September 17, 1997, applicable to reports to be filed during or after 1998, added subsection (j).

Session Laws 1997-515, s. 12, effective December 1, 1997, added subdivision (4a).

§ 163-278.9A. Statements filed by referendum committees.

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(2a) 48-Hour Report. — A referendum committee that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report.

(3) Final Report. — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such

contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6; 1997-515, s. 12(b).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, added subdivision (2a).

§ 163-278.10A. Threshold of $3,000 for Financial Reports.

(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

(1) Does not receive more than three thousand dollars ($3,000) in contributions, and

(2) Does not receive more than three thousand dollars ($3,000) in loans, and

(3) Does not spend more than three thousand dollars ($3,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than three thousand dollars ($3,000) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the three thousand dollar ($3,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term "to further his campaign" does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount. (1987 (Reg. Sess., 1988), c. 1028, s. 2; c. 1081, s. 3; 1989, c. 449; c. 770, s. 53; 1997-515, s. 4(e).)

Editor's Note. —

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective September 17, 1997, applicable to primaries, elections, and referenda beginning in 1998, substituted "$3,000" for "$1000.00" in the catchline; and in subsection (a) substituted "three thousand dollars ($3,000)" for "one thousand dollars ($1,000.00)" four times and substituted "three thousand dollars ($3,000)" for "$1,000" in the last sentence of the subsection.

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) **(Effective until February 2, 1998)** Contributions. — A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(1) **(Effective February 2, 1998)** Contributions. — A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(b) **(Effective until February 1, 1998)** Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure.

(b) **(Effective February 1, 1998)** Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) **(Effective February 1, 1998)** Best Efforts. — When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include the provision that if the treasurer, after complying with the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain". (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20; 1997-515, ss. 2(a), 2(b), 3(a).)

Subsections (a) and (b) Set Out Twice. — The first versions of subsections (a) and (b) set out above are effective until February 2, 1998. The second versions of subsections (a) and (b) set out above are effective February 2, 1998.

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective February 1, 1998, and applicable to all reports due on or after that date, in subdivision (a)(1), in the second sentence inserted "the principal occupation of the contributor", and added the last three sentences; added the last two sentences in subsection (b); and added subsection (c).

§ 163-278.12A. Disclosure of spending for material that names candidates.

(a) General Duty to Report. — Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if the printed material or advertisement names a candidate or names an individual whose prospective or potential candidacy is the principal purpose of a political committee. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and is not intended to advocate the election or defeat of a candidate or prospective candidate; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, or the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. — Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include an expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditures described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. — For the purpose of this section, notwithstanding G.S. 163-278.6(9), the term "expenditure" means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability. — No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person. (1997-515, s. 11(a).)

Editor's Note. — Session Laws 1997-515, s. 11(b) made this section effective December 1, 1997.

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 163-278.13. Limitation on contributions.

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) This section shall not apply to any State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c); 1997-515, s. 8(a).)

Editor's Note. —

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective January 1, 1998 and applicable to all elections occurring on or after that date, added "except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate" to the end of subsection (d).

§ 163-278.13A: Repealed by Session Laws 1997-515, s. 9, effective January 1, 1998.

§ 163-278.13B. Limitation on fund-raising during legislative session.

(a) Definitions. — For purposes of this section:

(1) "Limited contributor" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.

(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is "made" during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. — While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions. — While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Exception. — The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. — A violation of this section is a Class 2 misdemeanor. (1997-515, s. 9(b).)

Editor's Note. — Session Laws 1997-515, s. 9(c) made this section effective January 1, 1998 and applicable to all contributions solicited, made, or accepted on or after that date.

Subsections (d) and (e) were so designated at the direction of the Revisor of Statutes, the designations in Session Laws 1997-515, s. 9(b) having been (c1) and (d), respectively.

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 163-278.16. Regulations regarding contributions, expenditures and media advertising.

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) through (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless

(1) It bears the legend or includes the statement: "Paid for by (or Sponsored by) .... (Name of candidate, political committee, referendum committee, individual)";

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;

(3) The sponsor states in the media advertisement its position:
  a. For or against the candidate; or
  b. For or against an opposing candidate
provided that this subdivision applies only if the media advertisement is made for or against a candidate; and

(4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.

The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.

The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts.

(g) All printed matter for a political purpose from a political party or political committee which identifies a candidate that party or committee is opposing shall indicate in type no smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter. (1973, c. 1272, s. 1; 1975, c. 565, s. 2; 1979, c. 500, s. 4; c. 1073, ss. 19, 20; 1987, c. 652; 1997-515, s. 13.1(a).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, added subsection (g).

§ 163-278.16A. Restriction on use of State funds by declared candidate for Council of State for advertising or public service announcements using their names, pictures, or voices.

After December 31 prior to a general election in which a Council of State office will be on the ballot, no declared candidate for that Council of State office shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that declared candidate's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to that candidate's official function. For purposes of this section, "declared candidate" means someone who has publicly announced an intention to run. (1997-515, s. 13(a).)

Editor's Note. — Session Laws 1997-515, s. 13(b) made this section effective January 1, 1998.

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 163-278.22. Duties of State Board.

It shall be the duty and power of the State Board:

(1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this

Article and a prescribed uniform system for accounts required to file statements by this Article;

(2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article;

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article;

(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying;

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years.

(6) To prepare and publish such reports as it may deem appropriate;

(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article; and

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.

(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

(14) To calculate, assess, and collect civil penalties pursuant to this Article. (1973, c. 1272, s. 1; 1975, c. 798, s. 8; 1977, c. 626, s. 1; 1979, c. 500, ss. 9, 12, 13; c. 1073, s. 18; 1995, c. 243, s. 1; 1997-515, s. 7(e).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective January 1, 1998 and applicable to all reports due on or after that date, added subdivision (14).

§ 163-278.34. Filings; penalty for late filings.

(a) Except as provided in G.S. 163-278.9, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section.

(a1) The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Consistent with G.S. 115C-437, the State Controller shall pay the clear proceeds of civil penalties collected under this section to the County School Fund in the county in which the person charged with the violation resides. The State Controller shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the County School Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(b) The State Board of Elections may waive a late penalty if it determines there is reasonable cause. (1973, c. 1272, s. 1; 1975, c. 565, s. 5; 1979, c. 1073, s. 19; 1997-515, s. 7(a).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective January 1, 1998 and applicable to all reports due on or after that date, rewrote subsection (a); added subsection (a1); and rewrote subsection (b).

Part 2. Municipal Campaign Reporting.

§ 163-278.40. Definitions.

When used in this Part, words and phrases have the same meaning as in G.S. 163-278.6, except that:

(1) The term "board" means the county board of elections;

(2) The term "city" means any incorporated city, town, or village. (1981, c. 837, s. 3; 1997-515, s. 4(d).)

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1997 amendment, effective September 17, 1997, applicable to primaries, elections, and referenda beginning in 1998, deleted "with a population of 50,000 or over, according to the most recent decennial federal census" from the end of subdivision (2).

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the third day (Sunday excepted) following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary. (1971, c. 835, s. 1; 1973, c. 870, s. 1; 1975, c. 370, s. 2; 1983, c. 330, s. 2; 1985, c. 599, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 1012, s. 3; 1995 (Reg. Sess., 1996), c. 553, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 6, 1996, deleted "except" from the end of the introductory language of subdivision (2), deleted former subdivision (2)a. regarding a candidate seeking party nomination for municipal or district office in 1991, deleted former subdivision (2)b. regarding a candidate seeking party nomination for municipal or district office in 1992; and in subdivision (5) substituted "third day (Sunday excepted)" for "Thursday" in the first sentence, and added the second sentence.

§ 163-293. Determination of election results in cities using the election and runoff election method.

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total

vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

(1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.

(2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.

(c) The canvass of the first election shall be held on the third day (Sunday excepted) after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(d) Tie votes; how determined:

(1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.

(2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give

written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a runoff election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1; 1973, c. 793, s. 90; 1995 (Reg. Sess., 1996), c. 553, s. 3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 6, 1996, in subsection (c), substituted "third day (Sunday excepted)" for "Thursday" in the first sentence, and added the last sentence.

§ 163-294. Determination of election results in cities using nonpartisan primaries.

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election, as provided in G.S. 163-135(e) and G.S. 163-151(2). If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the third day (Sunday excepted) following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1; 1991, c. 341, s. 1; 1995 (Reg. Sess., 1996), c. 553, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 6, 1996, in subsection (b), substituted "third day (Sunday excepted)" for "Thursday" in the next to last sentence, and added the last sentence.

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

Local Modification. — Greenville, Bethel, Farmville, and Newport: 1997-414; city of Roanoke Rapids: 1997-101; city of Trinity: 1997-44, s. 5; municipalities in Lee County: 1997-449, s. 1.

For additional local modifications to this section, see the main pamphlet. City of Trinity: 1997-44, S.S.

For additional local modifications to this section, see the main volume.

§§ 163-307 through 163-320: Reserved for future codification purposes.

SUBCHAPTER X. ELECTION OF SUPERIOR COURT JUDGES.

Article 25.

Nomination and Election of Superior Court Judges.

[Effective with respect to elections conducted in 1998 and thereafter]

§ 163-321. (See editor's note for effective date) Applicability.

The nomination and election of superior court judges of the General Court of Justice shall be as provided by this Article. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 24, makes this subchapter effective with respect to elections conducted in 1998 and thereafter.

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Article 25 has a delayed effective date. See notes.

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§ 163-322. (See editor's note for effective date) Nonpartisan primary election method.

(a) General. — Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. — In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. — In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-323. (See editor's note for effective date) Notice of candidacy.

(a) Form of Notice. — Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date ________________ :

I hereby file notice that I am a candidate for election to the office of ________ in the regular election to be held ________, ________.

Signed ________________ :

(Name of Candidate)

Witness: ________________________________

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. — Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

(c) Withdrawal of Notice of Candidacy. — Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. — Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. — No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Article 25 has a delayed effective date. See notes.

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-324. (See editor's note for effective date) Filing fees required of candidates; refunds.

(a) Fee Schedule. — At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-325. (See editor's note for effective date) Petition in lieu of payment of filing fee.

(a) General. — Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. — If the candidate is seeking the office of superior court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Article 25 has a delayed effective date. See notes.

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-326. (See editor's note for effective date) Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. — Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. — No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior court.

(c) Receipt of Notification by County Board. — Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-327. (See editor's note for effective date) Death of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. — If a candidate for nomination in a primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. — If a person elected to the office of superior court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-328. (See editor's note for effective date) Failure of candidates to file; death of a candidate before election.

(a) Insufficient Number of Candidates. — If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death of Candidate; Reopening Filing. — If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Death of Nominated Candidate; Ballots Not Reprinted. — If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

Article 25 has a delayed effective date. See notes.

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§ 163-329. (See editor's note for effective date) Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. — If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. — Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

Article 25 has a delayed effective date. See notes.

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§ 163-330. (See editor's note for effective date) Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-331. (See editor's note for effective date) Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b). (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-332. (See editor's note for effective date) Ballots.

(a) General. — In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Article 25 has a delayed effective date. See notes.

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-333. (See editor's note for effective date) Canvass.

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-334. (See editor's note for effective date) Counting of ballots.

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

§ 163-335. (See editor's note for effective date) Other rules.

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Editor's Note. — As to the effective date of this Article, see the editor's note under § 163-321.

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 2.

The General Statutes Commission.

Sec.
164-14. Membership; appointments; terms; vacancies.

Article 4.

Sentencing Commission.

164-35. Commission established.
164-36. Powers and duties.
164-37. Membership; chairman; meetings; quorum.
164-38. Terms of members; compensation; expenses.
164-39. Executive director and other staff.

Sec.
164-40. Correction population simulation model.
164-41. Classification of offenses — ranges of punishment.
164-42. Sentencing structures.
164-42.1. Policy recommendations.
164-42.2. Community corrections.
164-43. Priority of duties; reports; continuing duties.
164-44. Statistical information; financial or other aid.
164-45. Administrative direction and supervision.
164-46. Annual report on recidivism.

ARTICLE 2.

The General Statutes Commission.

§ 164-14. Membership; appointments; terms; vacancies.

(a) The Commission shall consist of 12 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;
(2) One member, by the General Statutes Commission;
(3) One member, by the dean of the school of law of the University of North Carolina;
(4) One member, by the dean of the school of law of Duke University;
(5) One member, by the dean of the school of law of Wake Forest University;
(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
(7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
(8) Two members, by the Governor;
(9) One member, by the dean of the school of law of North Carolina Central University;
(10) One member by the president of the North Carolina Bar Association;
(11) One member, by the dean of the school of law of Campbell University.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the dean of the School of Law of Campbell University and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4; 1971, c. 1, ss. 1, 2; c. 76; 1975, c. 394, ss. 1, 2; 1977, c. 709, ss. 1, 2; 1991, c. 739, s. 33; 1995, c. 509, s. 119.)

ARTICLE 4.

Sentencing Commission.

Editor's Note. — This Article as originally enacted by Session Laws 1989 (Reg. Sess., 1990), c. 1076, was to expire July 1, 1992. This date was subsequently extended to July 8, 1993 by Session Laws 1991 (Reg. Sess., 1992), c. 812, s. 12 and c. 816, s. 1; to August 1, 1993, by Session Laws 1993, c. 253, s. 5.1; to July 1, 1994, by Session Laws 1993, c. 321, s. 200.1; to July 1, 1995, by Session Laws 1993 (Reg. Sess., 1994) c. 591, s. 6(a); to July 1, 1997, by Session Laws 1995, c. 236, s. 1; to July 1, 1997 by Session Laws 1997-256, s. 6; to July 31, 1997, by Session Laws 1997-347, s. 2; to August 15, 1997, by Session Laws 1997-401, s. 2; and to

August 29, 1997, by Session Laws 1997-418, s. 2. The Sentencing Commission was made permanent by Session Laws 1997-443, s. 18.6(b).

§ 164-35. Commission established.

The North Carolina Sentencing and Policy Advisory Commission is established. As used in this Article, the term "Commission" means the North Carolina Sentencing and Policy Advisory Commission. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. —

Session Laws 1993, c. 535, s. 1 provides: "The Sentencing and Policy Advisory Commission is directed to study restitution policy and its place as a part of North Carolina's criminal justice system."

§ 164-36. Powers and duties.

Sentences established for violations of the State's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate sentencing laws and policies in relationship to both the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission shall make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1997-443, s. 18.6(c).)

Editor's Note. — As to the provisions formerly providing for the expiration of this Article, see the Editor's Note preceding § 164-35.

Session Laws 1995, c. 236, s. 3, provides that, pursuant to G.S. 164-36 and G.S. 164-43, the Commission shall make a report of its recommendations, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly and the 1997 General Assembly.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 18.6(b), effective July 1, 1997, added the last sentence.

§ 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 28 members as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;

(2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
(3) The Secretary of Correction or his designee;
(4) The Secretary of Crime Control and Public Safety or his designee;
(5) The Chairman of the Parole Commission, or his designee;
(6) The President of the Conference of Superior Court Judges or his designee;
(7) The President of the District Court Judges Association or his designee;
(8) The President of the North Carolina Sheriff's Association or his designee;
(9) The President of the North Carolina Association of Chiefs of Police or his designee;
(10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
(11) One member to be appointed by the Lieutenant Governor;
(12) Three members of the House of Representatives, to be appointed by the Speaker of the House;
(13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;
(14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;
(15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
(16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
(17) The President of the Conference of District Attorneys or his designee;
(18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
(19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
(20) The President of the North Carolina Association of County Commissioners or his designee;
(21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
(22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
(23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
(24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 2; 1993, c. 253, s. 5.1; c. 321, s. 200.1; c. 535, s. 4; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418 s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this Article, see the Editor's Note preceding § 164-35.

§ 164-38. Terms of members; compensation; expenses.

The terms of existing members shall expire on June 30, 1997, unless they resign or are removed. New members shall be appointed or the existing members reappointed by the appointing authorities to serve terms of two years, unless they resign or are removed. Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 3; 1993, c. 253, s. 5.1; c. 321, ss. 200.1(b); 1993 (Reg. Sess., 1994), c. 591, ss. 6(a), (b); 1995, c. 236, s. 1; c. 236, s. 2; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1997-443, s. 18.6(b).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 18.6(a), effective July 1, 1997, substituted "June 30, 1997" for "June 30, 1995", and substituted "terms of two years" for "until July 1, 1997."

§ 164-39. Executive director and other staff.

The Commission shall employ an Executive Director from candidates presented to it by the Chairman and the Director of the Administrative Office of the Courts. The Executive Director shall have appropriate training and experience to assist the Commission in the performance of its duties. The Executive Director shall be responsible for compiling the work of the Commission and drafting suggested legislation incorporating the Commission's findings for submission to the General Assembly.

Subject to the approval of the Chairman, the Executive Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. Commission staff shall use office space provided by the Director of the Administrative Office of the Courts. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this Article, see the Editor's Note preceding § 164-35.

§ 164-40. Correction population simulation model.

The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this article, see the Editor's Note preceding § 164-35.

§ 164-41. Classification of offenses — ranges of punishment.

(a) The Commission shall classify criminal offenses into felony and misdemeanor categories on the basis of their severity.

(b) In determining the proper category for each felony and misdemeanor, the Commission shall consider, to the extent that they have relevance, the following:

(1) The nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, number of persons, or a breach of the public trust;
(2) The deterrent effect a particular classification may have on the commission of the offense by others;
(3) The current incidence of the offense in the State as a whole;
(4) The rights of the victim.

(c) For each classification of felonies and misdemeanors formulated pursuant to subsection (b), the Commission shall assign a suggested range of punishment. The Commission shall take into consideration the current range of punishment for each offense. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this article, see the Editor's Note preceding § 164-35.

§ 164-42. Sentencing structures.

(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:
(1) Imposition of an active term of imprisonment;
(2) Imposition of a term of probation;
(3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive probation, restitution, and community service;
(4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
(5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
(6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation.

(b) The sentencing structures shall be consistent with the goals, policies, and purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work, the Commission shall offer recommendations for the incorporation of those sections into the sentencing laws of North Carolina. In formulating structures, the Commission also shall consider:
(1) The nature and characteristics of the offense;
(2) The severity of the offense in relation to other offenses;
(3) The characteristics of the defendant that mitigate or aggravate the seriousness of his criminal conduct and the punishment deserved therefor;
(4) The defendant's number of prior convictions;
(5) The available resources and constitutional capacity of the Department of Correction, local confinement facilities, and community-based sanctions;

(6) The rights of the victims;
(7) That felony offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentences before they are eligible for parole; and
(8) That misdemeanor offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentence before they are eligible for parole.

(c) The Commission shall also consider the policy issues set forth in G.S. 164-42.1 in developing its sentencing structures.

(d) The Commission shall include with each set of sentencing structures a statement of its estimate of the effect of the sentencing structures on the Department of Correction and local facilities, both in terms of fiscal impact and on inmate population. If the Commission finds that the proposed sentencing structures will result in inmate populations in the Department of Correction and local confinement facilities that exceed the standard operating capacity, then the Commission shall present an additional set of structures that are consistent with that capacity. For purposes of this subsection, "standard operating capacity" means the total capacity expected to be available in both local confinement facilities and in the Department of Correction once all the proceeds of bonds authorized by Chapter 933 of the 1989 Session Laws and Chapter 935 of the 1989 Session Laws have been expended for the construction of prison facilities. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 5; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s.1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this Article, see the Editor's Note preceding § 164-35.

§ 164-42.1. Policy recommendations.

Using the studies of the Special Committee on Prisons, the Governor's Crime Commission, and other analyses, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:
(1) Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
(2) Determine the long-range information needs of the criminal justice and corrections systems and acquire that information as it becomes available;
(3) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve those problems;
(4) Assess the cost-effectiveness of the use of State and local funds in the criminal justice and corrections systems;
(5) Recommend the goals, priorities, and standards for the allocation of criminal justice and corrections funds;
(6) Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice and corrections systems;

(7) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems;
(8) Determine the sentencing structures for parole decisions;
(9) Examine the impact of mandatory sentence lengths as opposed to the deterrent effect of minimum mandatory terms of imprisonment;
(10) Examine good time and gain time practices;
(11) Study the value of presentence reports;
(12) Consider the rehabilitative potential of the offender and the appropriate rehabilitative placement;
(13) Examine the impact of imprisonment on families of offenders;
(14) Examine the impact of imprisonment on the ability of the offender to make restitution; and
(15) Study the need for an amendment to Article XI, Section 1 of the State Constitution to include restitution, restraints on liberty, work programs, or other punishments to the list of punishments allowed under that section;
(16) Study the costs and consequences of criminal behavior in North Carolina and consider the value of preventing crimes by using incarceration to deter both prospective criminals and convicted criminals from future crimes. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this article, see the Editor's Note preceding § 164-35.

§ 164-42.2. Community corrections.

The Commission shall recommend a comprehensive community corrections strategy and organizational structure for the State based upon the following:
(1) A review of existing community-based corrections programs in the State;
(2) The identification of additional types of community corrections programs, including residential programs, necessary to create an effective continuum of corrections sanctions in North Carolina;
(3) The identification of categories of offenders who would be eligible for sentencing to community corrections programs and the impact that the use of a comprehensive range of community-based sanctions would have on sentencing practices;
(4) A form of State oversight and coordination to ensure that community corrections programs are coordinated in order to achieve maximum impact; and
(5) A mechanism for State funding and local community participation in the operation and implementation of community corrections programs;
(6) An analysis of the rate of recidivism of clients under the supervision of the existing community-based corrections programs in the State, recidivism here measured as the clients committing new crimes at any time subsequent to

their entry into a community-based corrections program. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s.1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this article, see the Editor's Note preceding § 164-35.

§ 164-43. Priority of duties; reports; continuing duties.

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems in this State to ensure that sentencing remains uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 4; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s.1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. —

As to the provisions formerly providing for the expiration of this article, see the Editor's Note preceding § 164-35.

Session Laws 1995, c. 236, s. 3, provides that, pursuant to G.S. 164-36 and G.S. 164-43, the Commission shall make a report of its recommendations, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly and the 1997 General Assembly.

§ 164-44. Statistical information; financial or other aid.

(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing and corrections so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly.

(b) The Commission shall have the authority to apply for, accept, and use any gifts, grants, or financial or other aid, in any form, from the federal government or any agency or instrumentality thereof, or from the State or from any other source including private associations, foundations, or corporations to accomplish any of the duties set out in this Chapter. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s.1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration date of this Article, see the Editor's Note preceding § 164-35.

§ 164-45. Administrative direction and supervision.

The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its prescribed statutory powers independently of the head of that Office, except that all management functions shall be performed under the direction and supervision of the Director of the Administrative Office of the Courts. "Management functions," as used in this section, means planning, organizing, staffing, directing, coordinating, and budgeting. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration date of this Article, see the Editor's Note preceding § 164-35.

§ 164-46. Annual report on recidivism.

(a) The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly prepare an annual report on recidivism among criminal offenders. The findings of the report shall be based upon methodology similar to that employed in the May 1, 1996, Recidivism Study that was presented to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety. This methodology shall include tracking of all offenders assigned to community corrections programs or released from prison by fiscal year, beginning with the 1993-94 fiscal year for the first year's report, and then identifying those offenders rearrested within two years or more after assignment to a program or release from prison. Community correction programs to be included in the report are the Treatment Alternatives to Street Crime (TASC), the Community Penalties Program, Community Service, all supervised probation and parole programs, and all community correction programs supervised or funded by the Department of Correction.

(b) As part of this joint project, the Department of Correction shall provide the Sentencing and Policy Advisory Commission with a computerized list of offenders released from prison and offenders entering supervised probation during the specified time period. The list shall include specific offender-identifying information and clearly identify offenders entering community corrections programs supervised or funded by the Department of Correction. The Sentencing and Policy Advisory Commission shall be responsible for matching offenders to Division of Criminal Information (DCI) criminal records and for the production and printing of the final report. (1996, 2nd Ex. Sess., c. 18, s. 22.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 22.3(a) and (b), were codified as this section at the direction of the Revisor of Statutes.

Session Laws 1996, Second Extra Session, c. 18, s. 22.3, provides that data collection and report preparation for the first year shall be funded from the sum of $4,000 appropriated to the Judicial Department for the 1996-97 fiscal year for that purpose, and grant funds available to the Department of Correction for the 1996-97 fiscal year, up to the sum of $25,000. The report shall be due by April 1 of each year. Funding was provided for the first year's report only.

Chapter 165.

Veterans.

Article 7A.

Priority in Employment Assistance for United States Armed Forces Veterans.

Sec.
165-44.1. Purpose.
165-44.2. Veteran defined.
165-44.3. Priority defined.

Sec.
165-44.4. Coverage defined.
165-44.5. Priority employment assistance directed.
165-44.6. Implementation and performance measures.

§ 165-43. Protecting status of State employees in armed forces, etc.

Cross References. — As to salary payments for teachers, etc., serving in armed forces, see § 115C-302.1.

ARTICLE 7A.

Priority in Employment Assistance for United States Armed Forces Veterans.

§ 165-44.1. Purpose.

The General Assembly finds and declares that veterans in North Carolina represent a strong, productive part of the workforce of this State and are disadvantaged in their pursuit of civilian employment through their delayed entry into the civilian labor market and that it is only proper and in the public interest and public welfare that veterans be provided priority in programs of employment and job training assistance. (1997-171, s. 1)

Editor's Note. — Session Laws 1997-171, s. 2, made this Article effective June 12, 1997.

§ 165-44.2. Veteran defined.

For the purposes of this Article, "veteran" means a person who served on active duty (other than for training) in any component of the United States Armed Forces for a period of 180 days or more, unless released earlier because of service-connected disability, and who was discharged or released from the armed forces under honorable conditions. (1997-171, s. 1.)

§ 165-44.3. Priority defined.

For the purposes of this Article, "priority" for veterans means that eligible veterans who register or otherwise apply for services shall be extended the opportunity to participate in or otherwise receive the services of the covered providers before the providers extend the opportunity or services to other registered applicants. (1997-171, s. 1.)

§ 165-44.4. Coverage defined.

This Article shall apply to any State agency, department and institution, any county, city, or other political subdivision of the State, any board or commission, and any other public or private recipient which:

(1) Receives federal job training funds provided to the State or job training funds appropriated by the General Assembly; and

(2) Provides employment and job training assistance programs and services, including but not limited to employability assessments, support services referrals, and vocational and educational counseling. (1997-171, s. 1.)

§ 165-44.5. Priority employment assistance directed.

All covered service providers, as specified in G.S. 165-44.4, shall establish procedures to provide veterans with priority, not inconsistent with existing federal or State law, to participate in employment and job training assistance programs. (1997-171, s. 1.)

§ 165-44.6. Implementation and performance measures.

The North Carolina Commission on Workforce Preparedness shall:

(1) Issue implementing directives that shall apply to all covered service providers as specified in G.S. 165-44.4, and revise those directives as necessary to accomplish the purpose of this Article.

(2) Develop measures of service for veterans that will serve as indicators of compliance with the provisions of this Article by all covered service providers.

(3) Annually publish and submit to the Joint Legislative Commission on Governmental Operations, beginning not later than October 1, 1998, a report detailing covered providers“ compliance with the provisions of this Article. (1997-171, s. 1.)

Chapter 166A.

Editor's Note. — The legislation and annotations affecting Chapter 166A have been included in a recently published replacement chapter.

Chapter 168.

Handicapped Persons.

Article 1.

Rights.

Sec.
168-2. Right of access to and use of public places.
168-4.2. May be accompanied by assistance dog.
168-4.3. Training and registration of assistance dog.

Article 2.

Vocational Rehabilitation.

168-14. Vocational rehabilitation services for deaf persons.

ARTICLE 1.

Rights.

§ 168-2. Right of access to and use of public places.

Handicapped persons have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Economic and Community Development shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services. (1973, c. 493, s. 1; 1991, c. 672, s. 4; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 84; 1997-443, s. 11A.118(a).)

Editor's Note. —
Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"
Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 168-4.2. May be accompanied by assistance dog.

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, or hearing impaired person, as defined in G.S. 8B-1(2), has the right to be accompanied by an assistance dog especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the assistance dog on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, pursuant to G.S. 168-4.3, stamped "NORTH CAROLINA ASSISTANCE DOG PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the dog is being trained or has been trained as an assistance dog. An assistance dog may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. The trainer of the assistance dog may be accompanied by the dog during training sessions in any of the places listed in G.S. 168-3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function. (1985, c. 514, s. 1; 1987, c. 401, s. 1; 1995, c. 276, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4; is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 168-4.3. Training and registration of assistance dog.

The Department of Health and Human Services, shall adopt rules for the registration of assistance dogs and shall issue registrations to a visually impaired person, a hearing impaired person, or a mobility impaired person who makes application for registration of a dog that serves as an assistance dog. The rules adopted regarding registration shall require that the dog be trained as an assistance dog by an appropriate agency, and that the certification and registration be permanent for the particular dog and need not be renewed while that particular dog serves the person applying for registration as an assistance dog. No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities. (1985, c. 514, s. 1; 1987, c. 401, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 2.

Vocational Rehabilitation.

§ 168-14. Vocational rehabilitation services for deaf persons.

The Department of Health and Human Services shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed. (1975, c. 412, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. —
Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Chapter 168A.

Handicapped Persons Protection Act.

§ 168A-1. Title.

CASE NOTES

School Suspension of ADHD Student Justified. — Plaintiffs, student's parents, offered no evidence to show a violation of any North Carolina statute or the North Carolina Constitution where student diagnosed with attention deficit hyperactivity disorder admitted that he had a gun clip with live bullets in school and he was subjected to external school suspension, his parents attended and participated in disciplinary proceedings, and he was assigned to management school which could accommodate his specialized needs. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

§ 168A-2. Statement of purpose.

CASE NOTES

Cited in Gower v. Wrenn Handling, Inc., 892 F. Supp. 724 (M.D.N.C. 1995).

§ 168A-5. Discrimination in employment; exemptions.

CASE NOTES

Construction with Americans with Disabilities Act. — The standards under the North Carolina Handicapped Persons Protection Act (NCHPPA) are narrower than under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, and if a person is not disabled for the purposes of the ADA, she similarly is not disabled for the purposes of the NCHPPA. Williams v. Channel Master Satellite Sys., 101 F.3d 346 (4th Cir. 1996), cert. denied, — U.S. —, 117 S. Ct. 1844, 137 L. Ed. 2d 1048 (1997).

§ 168A-12. Statute of limitations.

CASE NOTES

Claim Barred. — Where former employee was officially aware of his termination on January 7, 1993, when he received COBRA eligibility form, but did not file suit until January 31, 1994, his claim was time-barred; he should have filed action within 180 days of January 7, 1993, in order to seek relief. Gower v. Wrenn Handling, Inc., 892 F. Supp. 724 (M.D.N.C. 1995).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY
Attorney General of North Carolina

3862

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 1, 1997

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Michael F. Easley

Attorney General of North Carolina